

DE PACE REGIS ET REGNI,

viz.

A Treatise declaring which be the great and generall Offences of the Realme, and the chiefe impediments of the peace of the King and the Kingdome, as *Treasons, Homicides, and Felonies, Menaces, Assaults, Batteries, Ryots, Routs, Vnlawfull assemblies, Forcible entries, Forgeries, Periuries, Maintenance, Deceit, Extortion, Oppression:* And how many, and what sorts of them there be, and by whom and what meanes the sayd Offences, and the Offendors therein are to bee restrained, repressed, or punished.

Which being reformed or duly checked,

Florebit pax Regis & Regni.

Collected out of the Reports of the Common Lawes of this Realme, and of the Statutes in force, and out of the painfull workes of the Reuerend Iudges, Sir Anthonie Fitzharbert, Sir Robert Brooke, Sir William Stanford, Sir Iames Dyer, Sir Edward Coke, Knights, and other learned Writers of our Lawes, By

FERDINANDO PVLTON of Lincolnes Inne, Esquier.

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The Preface to the Reader.

SEeing wee all haue receiued, and allow it for truth, That the ignorance of the Law doth excuſe none of offence; and alſo, That the Law doth helpe the watchfull, and not the ſlothfull man: therefore it behooueth each perſon, firſt to ſeeke the knowledge of thoſe Lawes vnder which hee doth liue, and whereby hee is to receiue benefit, or to ſuſtaine perill, and next, with al induſtry to frame his obedience vnto them, or humbly to ſubmit himſelfe to the cenſure of them. And though we find by experience, that ſome men by the ſluggiſhneſſe of their natures, others by the careleſneſſe of their owne welfares, and a third ſort wholly giuen ouer to pleaſures and vanities, do little reſpect to know, and leſſe to obey our criminall & capitall lawes, being things of great moment and importance, and therfore doe oftimes taſt the ſmart of them, & repent their follies when it is too late: Notwithſtanding, for that there be many others which doe endeuour to reade them, and imploy their induſtrie to conceiue them; ſome for the increaſe of their knowledge, others, in their actions to be directed by them, and many for the eſchewing of the penalties of them, & yet do not wholly addict themſelues to the ſtudy of the Law: therefore, as neere as I can, to ſatisfie the deſires, and to giue contentment to al the perſons aforeſaid, I haue done my endeuor in this Treatiſe, to lay open to all them that are willing to read, and thereby to know, which be the offences that the Law doth in generall tearmes condemne, and do moſt tend to the breach or blemiſh of the peace of the Realme, and to the diſlike of all the good

members thereof, and what punishments shee hath imposed vpon the transgressors therein, and by whom, & in what maner to be inflicted. If one man doe pretend title vnto, & sue to recouer any land, lease, or goods of anothers, all strangers stand indifferent, and meddle no further, but onely wish well to him that hath the best title, & desire that iustice may be done, and right may preuaile: but if a Treason, Murder, Burglarie, Robberie, Theft, notorious Riot, Forgerie, Periurie, Extortion, or Oppression be committed, then each man in conceit maketh it his owne case, and doth in a sort take it to be done to himselfe; and all persons generally do find fault with the transgressors therein, they exclaime of them, condemne them, & in their harts cry Crucifige *vpon them. And therfore the crimes aforesaid, & such like, may be termed generall offences, partly, for that they do redound to the generall dislike of all the good members of the realme; and partly for that they tend to the breach or blemish of the peace, being a thing generally imbraced or wished for, & which the king & all his good subiects are bound, and in a sort haue vndertaken to maintaine: and therefore as the king hath an interest in them, or iurisdiction ouer them all, to punish the offendors in them, as transgressors of his lawes, and disquieters of his peace, and people, so hath euery other well gouerned member of the Common weale, a care and regard of them, foreseeing that he may receiue the like wrong, and tast the same abuse, by the said, or other such malefactors meanes; and for that cause doth proclaime open warre against them, and is as desirous to root them out, as the husbandman his thistles out of his good corne, or the gardner his nettles from his sweet flowers. Wherefore, seeing a guiltie person in anie of the crimes aforesaid, is persecuted, in deed, or consent, by all wishing well to the Weale-publique, or their owne priuate estates: it is requisit that good men which eschew to offend for the loue of vertue, and euill men, which feare to offend for the dread of punishment, should both know those lawes which they are to make vse of, and the penalties which be threatned to the infringers thereof, to the intent that the good man hauing a will to stand, may trust to his feet, remaine firme, and continue his integritie; and the euill minded man beginning to stagger, may bend his endeuour to stay, and slide no further. All which by this worke (good Reader) I labour to performe, to the intent, that the well meaning man being made the better,*

ter, and he that before was lewdly disposed, the lesse hurtfull, may both at the last meet and ioyne in seeking and furtherance of that peace which will bee comfortable to the King and Realme, and pleasing both to God and man. The question may be asked me, Wherefore I intitle my Booke, De pace Regis & Regni, *and yet do chiefely make mention therein, of those crimes which do most disturbe the peace of the King and the kingdome, and so make the Booke and the title as it were* oppositum in subiecto? *Whereunto I answer, That the peace whereof I do write, is not obtained by the said offences committed, but by the lawes that do punish or restraine them, which lawes also I haue set downe at large in this Treatise, being the principall marke that I desire the Reader to behold: As, many Physitians haue written large volumes of seuerall infirmities in mans bodie, and then expressed which bee the Medicines to cure them; not to the intent to allure the Reader to seeke the disease, but how to preuent it before he hath it; or how to be rid of it when he hath taken it. And seuerall Diuines haue composed whole Tomes, of Pride, Malice, Couetousnesse, and such like offences, not to the intent to intice the fraile man to fall into them, but to shew the enormities of them, how grieuous they bee in Gods sight, and how hee hath threatned deepely to plague the offendors therein, to the end they might dehort and discourage transgressors from them, and might allure and winne them to humilitie, forgiuenesse, patience, charitie, repentance, and other vertues. And so I name my Booke of the quiet euent, and not of the persecuting cause; of the patient cured, and not diseased; of the sinner reclaimed, and not persisting in vice; of that peace which I would haue, and wish might flourish, and not of those Lawes that by awe do worke it. For these Lawes whereof I do write, and some others, do preserue the peace of the King, in that they doe assure vs who is our King, doe settle and continue the Crowne on his head, do put the Sword and Scepter in his hand, doe attribute to him seuerall Regall Titles, Honours, and Prerogatiues, doe bind his Subiects to performe all loyaltie, duetie, and obedience vnto him, and lay heauie punishments vpon the withstanders or denyers thereof. These Lawes bee as his Priuie Counsellours, incessantly respecting the preseruation of his person, peace, Crowne,*

How the Lawes doe preserue the peace of the King.

and

and dignitie : Theſe be as his Gentlemen Pentioners, attending daily in his preſence, to do him all princely honor and ſeruice: Theſe bee as the yeomen of his guard, waiting day and night to protect his perſon in peace, from all forcible aſſaults, and other perils: Theſe bee as his great and goodly Shippes, which lye houering on the Seas, and his ſtrong caſtles and forts of defence, which ſtand firmly vpon the land, wherewith he doth preuent forrein hoſtilitie, repreſſe inward tumults, and ſo keep himſelf and his people in peace: Theſe be as the Iudges, Iuſtices, Shirifes, Conſtables, and other Officers, watching euerie houre and moment in all the Shires, places, corners, and creeks of the Realme, to repreſſe outrages, and to maintain his peace: And laſtly, theſe be to him as his mynt, by which he doth coyn gold and ſiluer to defend himſelfe and his people in the time of warre, and to ſupport his honour and royall eſtate in the time of peace. And alſo by the protection of theſe Lawes euerie good member of the whole kingdome doth receiue the like benefit of peace: for in feare of them each perſon doth enioy his life and limmes in peace, and is defended from the bloudie minded murderer, and manqueller, and the rage of the furious quareller and fighter: And in feare of them the houſekeeper reſteth in peace, with his wife and family vnder his own roof, without being aſſaulted by burglars: And in feare of them the traueller iourneth in peace from one country to an other, without being ſpoiled by robbers: And in feare of them the Graſiers cattell do feed quietly in his paſture, without being ſtolne by theeues. The terrour of the Lawes do ofttimes reſtraine cholericke or contentious ſpirits from Batteries, Riots, Routs, Forcible entries, and other outrages; and couetous and greedy perſons, from practiſing or procuring of forgeries; and godleſſe and irreligious people, from perſuading or committing of periuries; and falſe and guilefull perſons, from putting in vre of frauds and deceits; and impudent and ſhameleſſe men, to wreſt from others by briberie, extortion, or oppreſſion. And diuers there be, who neither by the lawes of God, of nature, or reaſon, will be bridled and reduced to vertue, yet by the penalties & feare of ſome of our capitall and criminal laws, do yeeld to be curbed, & refrain from the practiſe of their vicious liues, of whom the ſaying of the Poet may be verified, Oderunt peccare mali formidine pœnæ. *And ſo I may truly verifie, that the Lawes whereof I do write, be the meanes of the peace*

How the Lawes doe preſerue euerie perſon in peace.

of

of the K. & the kingdome: And ſo long as the offences in this Treatiſe ſpecified ſhall be reformed, or duely checked by theſe Lawes, Florebit pax Regis & Regni. But though peace be mine end, and peace the marke that I roue at, yet there be ſome that thinke, that the diuulging of our criminall and capitall Lawes, in our mother tongue, will not be a meane of that peace which I doe ſo much aime at, for that, as they ſurmiſe, the ſame Lawes may then be miſconſtrued by euerie ignorant and vnlearned perſon, that can reade Engliſh, and the ſence and meaning thereof may be miſtaken, the Reader himſelfe may be led into errour, and others may be miſinformed by his imbecilitie of iudgement, ſeeing the ſame reader is able only to looke into the letter of the Law, and not to diſcerne of the intent of the makers, or of the true ſence thereof: And doe alledge for their reaſon, the ſame that was obiected at the making of the Statute of Annō 34. H. 8. ordained for the *St. 34. H. 8.* reſtraint of ſeuerall perſons to reade the Scriptures in the Engliſh tongue, for feare of raiſing of hereſies and ſchiſmes in Gods church, ſurmiſing then, that Ignorance was the mother of Deuotion, as theſe men now would make her of Obedience: But if the ſame parties will looke backe, they ſhall find the ſaid Statute repealed, and by the lear- *St. 1. E. 6. 12* ning and practiſe of the former, and our preſent age, the reaſon aforeſaid refelled. Men may not ſurceaſe to read the Scriptures, becauſe the diuell miſconſtruing the Pſalme, would haue perſuaded thereby *Pſal. 90.* Ieſus Chriſt the ſonne of God, to caſt himſelfe downe headlong from *Math. 4.* the pynacle of the Temple: Nor for that the Saduces being deceiued in a place of Deutronomie, would haue inferred by the woman which *Deut. 25.* maried ſeuen brethren, that there is no reſurrection of the dead: Nor *Math. 22.* for that S. Paul in his Epiſtles did write certaine obſcure things to be *2. Pet. 3.* vnderſtood, which vnlearned and vnconſtant men depraued as they did other Scriptures, to their owne deſtruction: For this deprauing, miſconſtruing, or wreſting of the lawes of God, or man, out of their true meaning, & proper ſence, doth conuince the reader of ignorance, pride, ſelfe-loue, or folly, and doth nothing impeach the credit of the ſame lawes, nor the neceſſitie or conueniencie of them, nor the conſiderat iudgement of the law-makers. We perceiue by the queſtions, demurrers, & argumēts, which oft do ariſe amongſt the reuerend Iudges, and learned men in the lawes of our Realme, touching the conſtruction and true meaning of diuers of our Statutes and common lawes,

lawes, that the old Prouerbe is true, Nemo naſcitur artifex, vix. No man is borne vnto, or at the firſt can obtaine the perfect vnderſtanding of any learning, ſcience, or art whatſoeuer, but euerie perſon beginneth in ignorance, & then increaſeth in knowledge by little & little, according to his capacitie and diligence: For, as the Pomander doth giue a pleſant ſauour onely when it is rubbed, and the flint doth yeeld fire onely when it is beaten; ſo knowledge in all lawes and other learnings, is obtained onely by much ſtudie, due conſideration, & deep digeſtion thereof, as an hole is made in the hard ſtone, by the often dropping of the ſoft and liquid water. And therefore, if the buſie ſearcher of other mens knowledge, and carper at their ignorance, will with the eyes of his mind looke into the old and new Teſtament, and euery booke, place, and particle thereof, and into the workes of euerie Rabbie, Councell, Father, Doctor, and other Expoſitor of the ſame, thereby to learne which parts of the ſaid Teſtament bee written hyſtorically, which prophetically, which metaphorically, which hyperbolically, and which literally, and how euery of them are to be conſtrued & taken: & into al the books of controuerſies in religion, which haue bin written in all former ages, and this our preſent time, and all the reaſons produced for the maintenanee of each ſeuerall perſons opinion, and then will bend his care vpon the church of God, and learne by the report of the Eccleſiaſticall Hiſtoriographers, related from the firſt creation of man vntill this day, when, where, by whom, & whoſe meanes ſhe hath flouriſhed and increaſed, and again, when, where, & by what meanes ſhe had bin obſcured and blemiſhed: And alſo will haue reſpect to the Coſmographers and Chroniclers of the ſeuerall kingdomes and prouinces of the world, who did deſcribe the ſcituation of them, the nature and diſpoſition of the people of each countrey, their forme of gouernment, their ſeuerall lawes and cuſtomes, the fertilitie and barrenneſſe of their ſoyls, and how in times they haue flouriſhed and decaied: And further, will reuolue in his minde the hundreds of volumes which haue bin written of the Common and Ciuile Lawes, and of the rites of other kingdomes, nations, and cities: And alſo will take notice of the infinit number of ſingular men, which in ſeuerall ages haue written learnedly and profoundly, of Grammar, Logicke, Rhetorick, Philoſophie, Phiſick, Arithmetick, Geometrie, Muſicke, and Aſtronomie, and publiſhed to all poſteritie the ſeuerall

grounds,

grounds, principles, and maximes of euerie of them: And moreouer, will diligently hearken vnto the number of volumes collected in seuerall ages, of the procreation, nature, and course of life, of all the beasts of the field, the wormes of the earth, the fowles of the ayre, and the fishes of the sea: and of the beginning, increase, & vertue of all trees, hearbs, roots, plants, & things vegetatiue: and of the operation of all stones, mynes, quarreyes, metals, and other things which grow vpon the face of the earth, or lye hidden in the ground: And further, will take a view in his memorie of the millions of bookes which haue been written in the Syriake, Chaldie, Hebrew, Greeke, and Latin tongues, for the increase of all sorts of learning and knowledge: And lastly, will giue his heart leaue to thinke of the huge multitude of Treatises, which haue beene composed in verse, mytre and rime, in a sweet and harmonicall tune: and then if the same curious carper at other mens ignorance, after his said due consideration had of all the writings and writers aforesaid, and of their seuerall deepe wisdomes, knowledges, and vnderstandings in the arts, sciences, and things aforesaide, and how necessary, beneficiall, or comfortable they be to man, will returne home againe, and looke into his owne breast and bosome, and examine himselfe seriously what he doth lacke of all the artes and sciences aforesaid, and also how farre from perfection he is in his owne profession, I doubt not but whatsoeuer before he thought of himselfe, he will now find that he hath but a small drop, sparke or particle of learning or knowledge, in respect of that he wanteth, and which hee may perceiue to haue beene in some others; and that hee hath no cause to maligne the ignorance of others, but rather to pitie his owne, and to say with the old Philosopher, Hoc solum scio quod nihil scio. Many, wholy deuoted to their owne opinions, doe desire to maintaine Paradoxes, & to strain all their wits to defend them, though their assertions seeme neuer so improbable and their arguments neuer so weake to others as appeareth by Rodolphus Agricola, who did write a booke le vanitate scientiarū, which the whole wisdome of the world in all ages hath so much admired and honoured: and by Erasmus Roterdamus, who compiled a Treatise Of the praise of folly, attemping therin, to proue by a farre fetched argument, that the folly of man and woman together, is the onely cause of the propagation and continuance of mankind vpon the face of the Earth, and that the

Cratippus.

the fault and folly of Adam in eating of the forbidden apple, contrarie to Gods commaundement, being the breach of the peace betweene God and man, was the cause that moued Iesus Christ the son of God, to descend from the bosome of his father, to take flesh of the blessed virgin Marie, to suffer his passion for the sinnes of man, and so to renew peace betweene God and man. And therefore we must not insist vpon the priuat conceits, or particular phantasies of a few opinatiue persons, but shall do well rather to obserue what care our fathers from one age to another, did take, and what ordinances they established in Parliament, that seuerall penall, criminall, and capitall lawes and statutes, should be read or proclaimed in Churches, in Faires, in Markets, at the generall Assises, and Quarter Sessions of euerie countie, at Leets, and Lawdayes, and in the Halls of euerie Inne of Court, and Chauncerie, and how the same is continued, and duely put in practise at this day, to the intent that the same lawes, and the penalties thereof, should be heard, learned, knowne and vnderstood by all sorts of persons willing to perceiue and apprehend the same. But if there be any, who persuading themselues that they doe search further into the bowels of reason or experience, than all our foresaid law-makers and others haue done, and will by disputes encounter the publishing or reading of our foresaid lawes in the English tongue, I must and will patiently content my selfe, suffer them to affirme what they please, and say with mine old Schoolemaster

St.25.E.1.3.
St.7.R.2.6.
St.13.
H.8.9.
St.5.El.1.

Cato, Arbitrij nostri non est quid
quisq; loquatur.

Of Menaces, Assaults, Batteries, Imprisonments, and Maihems.

VNdertaking to write of the Peace of the King, and the Kingdome, & the chiefe impediments thereof, and to declare which be the great & generall offences of the Realme, I haue thought it good to begin with the verie roote and principall cause of the same, which are Menaces, Threatnings, & other bitter words, beeing as streames gushing out of contentious spirits, and venemous tongues, their natural fountaines & springheads, from whence do ensue sometimes Assaults, Batteries, Riots, Routs, Unlawfull assemblies, Forces, and Forcible entries; some other times Forgeries, Periuries, and Oppressions; and ofttimes Maihems, Manslaughters, and Murders. And therefore king *Dauid* hauing felt the sting of the bitter curses, opprobrious slanders, and sharpe menaces of king *Saul*, *Shemei*, *Nabol*, and others, did verie aptly and effectually decipher euill tongued persons by these words: Sepulchrum patens est guttur eorum; linguis suis dolose agebant, venenum aspidum sub labijs eorum: Quorum os maledictione & amaritudine plenum est: Veloces pedes eorum ad effundendum sanguinem: Contricio & infœlicitas in vijs eorum, & viam pacis non cognouerunt. And againe, speaking in their persons, he saith, Qui dixerunt, linguam nostram magnificabimus, labia nostra à nobis sunt, quis noster Dominus est? And for that cause the same king, wel obseruing the sea of mischieues, miseries, and calamities, which daily doe flow from euill tongues, made his humble prayer vnto God, to graunt him power to be watchfull of his owne tongue, saying, Pone custodiam ori meo, et ostium circumstantiæ labijs meis. And when he perceiued that God had hard his prayer, he said ioyfully, Dixi, custodiam vias meas vt non delinquam in lingua mea, viz. I haue made a full resolution, and promise to my selfe, that I wil so vse and gouerne my speech, that I will neuer offend in my tongue. And the said king telleth vs plainely, that there is no other meanes to haue the comfort of this life, and to enioy good daies in this world, but to restraine the tong from speaking of euill, the lips from powring out mischiefe, and to seeke peace and follow it. And his sonne, king *Salomon*, confirmed the same, saying, Vita est mors in manibus linguæ. And though slaunderous speeches, & menaces be but words, and may be taken but only as a smoke, a breath, or blast of wind and so to vanish and be dispersed in the aire

The euill fruits of Menaces.

Psal. 13.

Psal. 11.

Psal. 140.

Psal. 38.

Psal. 33.

Prou. 18.

like dust; yet experience doth teach vs, that by the imbecilitie of mans iudgement, and the corruption of his nature, they be vsed as firebrands of priuat and open grudges, quarels, conspiracies, and most other tragicall and turbulent stratagems: and thereby a verbis ad verbera peruentum est. And we seldom heare of any the said enormities effected, but they take their beginnings of menaces, threats, slanders, or other euill words: which offences growing by menaces, and other speches tending to contention, and the breach of the peace, the whole bodie of this realme hauing deeply tasted the smart thereof, and desirous to preuent the like, by a statute made An. 18. E. 3. did ordaine, Stat. 18. E. 3.
that the Kings Iustices, amongst other articles, shal be sworne, in case any, of what estate or condition they be, come before them in their Sessions with force and armes, or otherwise, against the peace, or against the forme of the statute thereof made, or disturbe execution of the common law, or to menace Sta. 2. E. 3. 3.
the people that they may not pursue the law, they shall cause their bodies to be arrested and put in prison. And in case they be such, that they cannot arrest them, the same Iustices shall certifie the King of their names, and of their offence spedily, so that he may thereof prouide conuenient remedie. There is another foule puddle that ouzeth from the same corrupt goginire, and distilleth out of a heart likewise infected with malice and enuie, but is deuised and practised by another mean than the former, which is by libelling, secret slandering, or defaming of another: for this priuy backbiter doth not by words impeach his aduersarie in so manifest and turbulent maner, as the cholerick menacer in his furie doth, but seming to sit quietly in his study, he doth more deeply pinch him, and infireth a more durable wound into his fame, and credit, than the other boistrous fellow doth into his bodie, who in a moment threatneth to doe more, than peraduenture he after is willing, or dareth to performe in an age. The menacer layeth open his name, and his griefe, and standeth in the face of his enemy, and discouereth the corasiue of his mind, and doth thereby giue a forewarning to his aduersarie to prouide for, and defend himselfe: But this secret canker the libeller, concealeth his name, hideth himselfe in a corner, & priuily stingeth him in fame, reputation, & credit, who then neither knoweth from whom, or vpon what cause he receiueth his blows, nor yet hath means therein to defend himselfe. And whether this libelling, secret Co. li. 5. 125
slandering or defaming, be against a publik magistrate, or a priuat person, yet it may tend to the breach of the peace, to the raising of quarels, and effusion of blood, & so may be a special impediment of that peace which al good policy endeuoreth to maintain. For if it be against a publike magistrat, it is a great scandal & offence to the king, his chief magistrates, & the whole gouernment of the realm, to assigne such an officer to rule & gouern others, who himself is void of gouernmēt & shal deserue to be impeached with such crimes as he shalbe tared with, or shalbe imputed vnto him by such an infamous libell. And if it be but against a priuat person, yet seeing that a libell, or other note of infamie, is inuented to defame him, to tread his honor and estimation in the dust, to extirpate & rot out his reputation & credit from the face of the earth, to make him a scorn to his enemies, & to be derided & despised by his neighbors, it doth greatly kindle the wrath of him, & of such as be of his kindred, alliance, & true friendship, & vrge them to reuenge: whereupon do oftimes ensue grudges, quarels, frates, combats, & manslaughters. Sometimes the malicious defamor powreth out his venim in writing, by a scandalous booke, ballad, epigram, or rime, either in miter or prose: some other times by songs, scofs, iests, or taunts: and diuers times by hanging of pictures of reproach, signes of shame, or tokens of

Menacers shall be imprisoned.

The enormities of priuie defaming and libelling.

dis-

disgrace, nére the place where the party thereby traduced doth most converse: as the picture of the gallowes, pillorie, cucking stole, hornes, or other such like. In which cases the law hath prouided, that the partie delinquent, when he is found out and discouered, shalbe sharply punished: for he may either be indicted for the same offence by the ordinarie course of the common Law: Or else a Bil may be exhibited against him in the Starre chamber, where he shal be punished according to the quality of his demerits, by fine & imprisonment; and if it be an exorbitant offence, then by Pillorie, losse of his eares, whipping, or &c. or the party grieued may haue an Action vpon the case against the offendor, and recouer his damages. And in this case it is not materiall whether the Libel be true or false, or the party scandalized thereby be lyuing or dead, or be of good name, or euill: for though the libell be true, and the party defamed be euill, yet our good Lawes be deuised to punish him, and such like euill men by a due course of Iustice, after his offence is presented, inquired of, tried, and proued to his face before lawfull magistrates thereunto assigned, and he is not to be carped at, accused, and condemned in a corner behind his backe by any other priuat person, who intrudeth himselfe without warrant to be a censor of manners, and rather seeketh the discredite of the partie, then the reformation of his faults: for this secret searching into, and sifting of other mens conditions, dyuing into their offences, and diuulging them to their discredites, doth conuince the offendor to be a man of lewde disposition, to haue made shipwracke of his conscience, & doth brand him during his life with the name of an infamous Libeller, or slaunderous backbiter. And therefore by Gods owne commaundement it is specially giuen in charge to euery of his people: Non maledices principi populi tui. Non facias claumniam proximo tuo. And king *Dauid* saith, Detrahentem secreto proximo suo, hunc persequebar. And God doth threaten, that he himselfe will take reuenge of the slaunderer, saying: Sedens aduersus fratrem tuum loquebaris, & aduersus filium matris tuæ ponebas scandalum; hæc fecisti, & tacui, existimasti inique quod ero tui similis, sed arguam te, et statuam contra faciem tuam. And as infamous libelling, and secret defaming, be ofttimes the causes of grudges, seeking of reuenge, and thereby of quarrels, in like sort words of slaunder, or speeches of disgrace, openly published to the face of an other, or behind his backe, be also firebrands of variance, dissention, fighting, and the shedding of blood, and so be speciall meanes of the breach of the peace: As it may partly appeare by the words of the kings writ alwayes inserted in an action vpon the case, brought by one person against an other for speaking of slaunderous words, in which writ it is supposed that the words were spoken, Ad grauē damnum ipsius querentis, & contra pacem nostram. And the same is further proued by the words of the statute of An'. 2. R. 2. whereby it is ordeined, That because publishing of false newes, tales, and lyes of Prelates, Dukes, Earles, Barons, and other noble and great men of the Realme, or of the Chauncellor, Treasorer, Clerke of the priuie Seale, Steward of the Kings house, Iustice of the one Bench, or of the other, or of other great Officers of the Realme, debate, discord, or matter of discord or slaunder may rise betweene the Lords and commons, whereof great perill may come to the Realme, and spedy subuersion and destruction of the same: therefore it was enacted by the said statute, That if any do commit the the before specified offence, he shall be taken and imprisoned (according to the statute of Westm. 1.) vntill he hath brought forth him which did speake the same. And further by an other Statute made An. 12. R. 2. it was moreouer enacted, That when the said offendor is taken & imprisoned, and cannot find

The punishment of a secret Defamor.

Lib. Intr. fol. 13.

Psal. 100.

Psal. 49.

Action vpon the case for slaunder is contra pacem.

St. 2. R. 2. 5.

Slaundering of Noble men or great Officers.

St. 3. R. 1. 34.

St. 12. R. 2. 11.

him that spake the words, then he shall be punished by the aduise of the Councell. And to the intent that such euill disposed persons, which by their lewde speeches & slaunderous words or reports, do indeuor to breake or disquiet the peace of the Realme, might the sooner be inquired of, sound out, and punished, By a statute made An. 1. & 2. P. & M. it was further established, That the Iustices of Peace in euery Shire, citie, & towne corporat, within the limits of their seuerall commissions shall haue full power to examin heare and determine the causes abouesaid in the said 2. acts of 3. E. 1. & 2. R. 2. specified, and to put the said 2. stat. and euery branch in them conteyned in due execution, that condigne punishment be not deferred from such offendors. And besides the before mentioned penalties assigned to be inflicted vpon transgressors by the foresaid stat. euery nobleman, or great officer of the realm, against whom any scandalous words, false newes or lies be spoken, may prosecute against the offendor an action De Scandalis magnatum, and recouer damages against him. And in like sort may euery inferior person for any such like words of infamie spoken against him pursue an action vpon his case against the offendor and recouer his damages. And further if one person shall exhibit a bill in the Starre chamber against an other, & amongst other things charge him with murder, piracy, robbery, or other felony, or to be a procurer thereof, or accessory thereunto, or with any other offence which is not examinable in the said court, the defendant in the said bill may prosecute against the complainant therein an action vpon the case and recouer his damages; for this bill was exhibited of malice by the complainant to remaine of record in the said court, to the infamie and slander of the defendant, and not to punish him for the said offences suggested in the same bill by a course of iustice, seeing the court of Star chamber hath no authoritie to inquire of, or punish the same offences. But if the complainant doth suggest in his said bill of complaint any matter against the defendant which is examinable in the said court, then no action vpon the case is maintenable against him by the defendant therefore, though the matter surmised be meerely false, for it is done in a course of iustice: Et sub iudice lis est, whether the matters suggested be true or false vntill they be proued. And in former ages speeches tending to the reproch of others were so odious that King Edgar ordeined that his tongue should be cut out which did speak any infamous or slaunderous words of an other. But though it be true (as is aforesaid) that infamous libels, secret defamations, or publik slanders, or reproches, be oft times more offensiue to the party tared thereby, then open menaces & threats of violente are: Yet seeing for the most part menaces springing out of distemperat & cholerick humors do more hastilie breake forth into further fury and extremities tending to the breach of the peace, then libelling and secret defamation doe, which must haue a breathing time to be inquired of, bolted forth, and then to be punished, Therefore I will omit to write any further of libelling or defamation and goe forward with menaces &c. & tota sequela sua.

St. 1. & 2. P. & M. 3.

11. El. Dy. 285.

Co. li. 4. 12.

Edg. Lex 4.

The difference of menace, assault, and batterie.

2 Menaces, Assaults and Batteries be things of seuerall natures, and yet for the most part they tend to one effect, viz. to hurt him against whom they are bent. Menacing is a threatning of some hurt to be done or procured by the speaker or some other by his meanes to the person of the hearer, or his wife, seruant, tenant or other, whereby he receiueth losse, or hurt. Assault is an attempt to execute the thing menaced by force and violence. Battery is the performing of the thing before threatned, viz. the beating of him that was first menaced, and then assaulted. Menacing beginneth the quarrell, assaulting

ting doth increase it, and batterie accomplisheth it: Menacing layeth together fire & coales in the house of peace, assault bloweth it and maketh it burn. And battery doth endeuor to consume the whole building to the ground. And therefore because some sorts of menacing, assaulting, and battery be professed enemies to the peace whereof I do write, I will endeuor plainely to expres which be those menaces, &c. that the law doth inhibit, and in what sort, and by what means she doth restrain, and punish the offendors therein.

3 The law hath alwayes had that speciall regard to the preseruation of the peace of the Realme, and of euerie member thereof, that she could not endure, neither would suffer one person so much as to menace or threaten another of life, or member, or of any thing tending to the breach of the peace: And therefore she hath not only assigned in all countries and places of this realme, Sheriffes, Justices of peace, Constables, Thirdborroughs, and diuers other officers, to be as watchmen, continually attending, & bending their cares & industries, to preserue the peace, and to defend each person from the violent sting of menace, assault, or batterie: but also she hath giuen and prouided for him who
40.E.3.40. is only menaced, an action of Trespas (as she hath done for him who is assaulted or beaten) whereby he shall recouer his damages; so that the same menacing do tend to the hurt of him who was menaced, his seruant, tenant, or any other person, by whom he liueth, or receiueth benefit. And therefore the plaintife in an action of Trespas of menace, may declare: That he is an Atturney, and that in respect of the defendants menace, he durst not attend his clients suites, from such a day in M. vntill such a day in D. or that he is a husbandman, and could not attend or ouersee his husbandry: or that he is a bailife, or
37.H.6.3. collector of rents, and could not in respect of such menace, by the space of many monethes, attend his bayliwicke, collection of rents, or other businesses: or
30.Ass. that in regard of such menacing, he was not able, nor durst trauell abroad, to
P.14. apply his trade, or get his liuing, without such force & defence, as his estate was not able to maintaine. As the collector of a fiftene brought an action of
27.Ass. tresPas for the king and himselfe, against one, and declared, That the defen-
P.14. dant did so rebuke him, that he durst not tarie in the towne to gather vp the fiftene, for feare least the defendant would haue beaten him. And though the defendant did not beat him, yet this rebuke was adiudged an assault, and the plaintife recouered an C.s. in damages. And in like sort one brought a bill of
30.Ass. tresPas in the Common pleas, for the king & himselfe, & declared, That where-
P.14. as he was comming towards the Common pleas, to answer in a plea of land, the defendant came, and did so beat, assault, and menace him, that he durst not bring his writings, or come thither, without great charges, in contempt of the king, contrarie to his peace, & to the damages of the plaintife &c. Whereunto the defendant pleaded not guilty. And the defendant was compelled to find pledges of his good behauiour, & for the peace, & that he should not meddle with
Fitz. Trespas 159. the plaintife, by himselfe, nor by any others, openly nor secretly. In an action of Trespas the plaintife declared, That the defendant so menaced him in one
37.H.6.2. county, that he could not do his businesse in an other county: and this was adiudged a good declaration, and it was ordered, that the issue should be tried in the county where the menace was, for there was all the tresPas committed, and the other county was put in only to increase the damages.

The declaration in Trespasse of Menace.

Rebuke in Assault.

Li.Ink 392. 22.Ass. P.76. 20.H.7.5. 4 And in like sort, if one man do menace or threaten the seruant of another, of life or member, in such sort as the same seruant doth depart from his master,

Menacing a seruant, whereby he departeth.

whereby the maſter doth for a time loſe the ſeruice of his ſaid ſeruant: in this caſe the maſter ſhal haue an action of treſpas, and declare againſt him that did ſo menace his ſeruant, That he made aſſault vpon his ſeruant, did beat him, wound him, and cuill intreat him, and ſo often menaced to kil and diſmember him, and did him ſo many iniuries and wrongs, that his ſaid ſeruant durſt not for ſuch menaces, and for feare of being killed or maimed, attend his buſineſſe (viz. the bailiwike of his husbandry, his ſeruice in husbandry, or keeping of his horſes, beaſts, ſheep, &c.) And ſo his ſaid buſines and ſeruice lay vndone, and the ſaid plaintife loſt the ſeruice of his ſaid ſeruant, from the 20. day of M. vntill the 20. day of N. then next following, to his great damage, and againſt the Kings peace, wherof he complaineth, that he is endamaged 20. l. And ſo note, that a man ſhall not haue an Action of Treſpaſſe for menace onely, vnleſſe he hath alſo thereby ſome other loſſe or hurt: for the menace and the hurt which the partie doth ſuſtaine thereby, doe make the Treſpaſſe: and doe giue cauſe of the action of Treſpaſſe. But it is otherwiſe, if a man beat the wife or villain of another, for in thoſe caſes, the partie wronged, viz. the husband, or Lord, ſhall haue an action of Treſpaſſe, though hee hath receiued no loſſe, nor hindrance in commoditie: For hee may ioyne in ſuit with his wife, to recouer recompence for the batterie and wrong done vnto her by the treſpaſſor: and alſo he may puniſh him by action of Treſpaſſe, who beateth his villaine, as he may doe him who beateth his horſe, cow, ore &c.

7.E.4.24. 27 Aſſ. p.12.

20.H.7.5.

Menacing a tenant, whereby he departeth.

5 And the ſame law is if one man doe ſo menace of life and member, the tenants of another, which doe hold of him certaine lands and tenements at will, paying to him therefore certaine yearely rent and ſeruices; in reſpect of which menace, the ſame tenants doe depart from their ſaid tenements, and leaue the ſaid rents vnpaid, and the ſame ſeruices vndone: In this caſe the Lord, or owner of the ſame tenements, may haue an action of Treſpas againſt ſuch menaces, in the kings Bench, or Common pleas, and declare of the ſayd menacing of his tenants at will, of their departure from his tenancies thereby, and the loſſe and preiudice that he hath ſuſtained by his rents vnpaid, and ſeruices vndone, and he ſhall recouer damages accordingly. And in this caſe it is a good plea for the defendant, to plead, That thoſe tenants of the plaintifes, which departed from their tenancies, where the freeholders, & the freehold tenants of the plaintifes, and not his tenants at will: For if it be ſo, the plaintife ſhall recouer nothing againſt the defendant, becauſe he hath other ſufficient remedie to recouer the ſeruices of his freeholders, or the land in ſtead of them. And ſo it is to plead, that the the tenants which departed, were tenants for terme of yeares.

Li Inct 392. 20.H.7.5. 9.H.7.7.

Menacing a Lords freeholder.

21.H.6.31.

6 In the caſes aforeſaid, he that is wronged in his owne perſon, his ſeruants or tenants, by the menace of another, whereby he ſuſtaineth loſſe, ſhall haue his action of Treſpaſſe againſt the offendor, for the ſaid menace and the hurt which he receiueth thereby; and the king alſo ſhall haue a fine of the offendor, for that the menace was of life and member, and ſuggeſted to be done vi & armis, and ſo tended to the breach of the peace. But if it bee ſuch a menace as doth not tend to the breach of the peace, then the law is otherwiſe: for then the partie menaced, ſhall neither haue an action of Treſpaſſe, or other remedie againſt the menacer, neither ſhall the king haue a fine of him. As if a man dye ſeiſed of certaine lands, and a ſtranger will abate, and then the heire of him who dyed ſeiſed, will enter vpon the ſtranger, & menace and threaten him,

Menace which is iuſtifiable.

21.H.6.28. 21.H.6.26. 9.H.7.7.

him, That if he will not depart from the poſſeſſion of the ſame land, that then he ſhall repent it, as the law will allow: this is menace iuſtifiable, for that he hath ſaid no more, than the law will allow him to performe. And in like ſort, if
Li. Inſ. 555. A. be diſſeiſed of his freehold, ſlected out of his terme of yeares, diſpoſſeſſed of his goods, beaten, aſſaulted, or euill intreated by B. if in this caſe A. will ſay vnto B. That he will not endure thoſe wrongs, nor put them vp at his hands, but will proſecute ſuit according to the law of the Realme, in the ſharpeſt manner that he can, for the redreſſe of thoſe iniuries, and for the due puniſhment of B. this is menace iuſtifiable, and nothing tending to the breach of the peace: for A. hath ſaid nothing, but that the law will permit him to do. And in theſe caſes the menacer doth yeeld to make the law iudge of his wrongs, and that alſo in peaceable manner: but in the former caſes, the menacer doth threaten to be the reuenger of his owne iniuries, and ſo to be his owne iudge, and that alſo in a forcible and vnlawfull ſort. And ſo it is, if one man owe money to an other, and at the time aſſigned doth not pay, if the creditor do ſay to the debtor,
16. Ed. 4. 7. that he will ſue him according to the courſe of law, and impriſon him for his debt, this is menace iuſtifiable, for the law doth allow him to doe it.

7 As menace in words is accounted in many caſes to be a meane of the breach of the peace, and ſo puniſhable by the lawes of the realme: ſo menace by deeds, by behauiour, geſture, wearing of armour, or vnuſuall and extraordinary number of ſeruants or attendants, is accounted to be in affray and feare of the people, a meane of the breach of the peace, and ſo puniſhable: for the law doth intend, that he which in a peaceable time doth ride or go armed, without ſufficient warrant or authoritie ſo to do, doth meane to breake the peace, and to do ſome outrage: ſeeing ſhe is able, and will be alwaies ready to defend euery member of the common weale, from taking or receiuing of force or violence
St. 2. E. 3. 3. from others, if himſelfe doe not giue cauſe to the contrary: Whereupon by a ſtatute made at Northampton, anno 2. Ed. 3. it was enacted, That no man great nor ſmall of what condition ſoeuer he be (except the kings ſeruãts in his preſence, & his miniſters in executing of the kings precepts, or of their office, and ſuch as be in their company aſſiſting them, and alſo vpon a Crie made for armes to keepe the peace, and the ſame in ſuch places, where ſuch acts happen) be ſo hardy to come before the kings Iuſtices, or other the kings miniſters in doing their offices, with force and armes: nor bring no force in affray of the peace, nor to goe nor ride armed by day nor by night in faires, markets, nor in the preſence of the Iuſtices, or other miniſters, nor in no part elſewhere, vpon paine to forfeit their armour to the king, and their bodies to priſon, at the kings pleaſure. And that the kings Iuſtices in their preſence, Sherifes, and other miniſters in their bailiewickes, Lords of franchiſes, and their bailifes in the ſame, and mayors, and bailifes of cities and boroughs within the ſame cities and boroughs, and borough-holders, and wardens of the peace within their wards, ſhall haue power to execute this act. And that the Iuſtices aſſigned, at their comming downe into the countrey ſhall haue power to enquire, how ſuch officers and lords haue executed their offices in this caſe, and to puniſh them whom they find haue not done that which pertained to their office.
St. 7. R. 2. 13. And after by a Statute made anno 7. Ric. 2. it was ordained, That no Lord,
20. R. 2. 1. knight, nor other, little, or great, ſhall goe nor ride by night or by day armed, nor beare ſallet or ſkull of yron, nor other armour, vpon the paine of forfeiture thereof to the king (except the kings officers and miniſters in doing their offices:) And by the ſame Statute it was alſo aſſented, that none ſhould

Menace by going or riding armed.

ride

Launcegaies. ride or go with Launcegaies (being an armour defensiue then vied) in affray of the people, but that the same Launcegaies should be for euer put out.

Wearing of a mayle coate. 8 And shortly after, the same Statute of 2.Ed.3. was put in execution: for a knight was attached and arraigned in the kings Bench, for that hee did weare armor vnder his vpper garment in the kings palace, and in Westminster hall: who pleaded that there was debate betweene him & an other knight, who did that weeke strike him, and yet did menace him, and that for feare of further peril, and to saue his life he did weare the same armour: But this was adiudged no plea, for the court did award, that he should forfeit his armour, and be committed to the marshalsey. And though he desired to be let to mainprise, he was not admitted thereunto vntill the kings pleasure was knowne. And the other knight his aduersary, was sent for into the kings Bench, and there commaunded vpon paine of all that hee could forfeit, that hee should not meddle, nor doe anie thing but that which was good to his said aduersarie. 24.E.3.33.

Labourers shall weare no weapons. 9 And because seruants in husbandry, labourers, artificers, and other persons of meane degree, should take no incouragement nor occasion to breake the peace, nor weare any weapons therewith to menace, threaten, or terrifie others: Therefore by a statute made anno 12.R.2. it was ordained, That no seruant in husbandry, or labourer, nor seruant of artificer, or victualler, shall beare any Buckler, Dagger, or Sword, vpon paine of forfeiting of the same (except it be for the defence of the realme in the time of warre, and then by the survey of Arraiers for the time being, or in trauelling with their maisters, or on their maisters businesse.) And Sheriffes, Maiors, Bayliffes, and Constables shall haue power to arrest all offendors against this statute, and seize the said Bucklers, Swords, and Daggers, and keepe them vntill the Sessions of the Iustices of peace, and the same shall present before the same Iustices in their Sessions, together with the names of them that did beare the same. But this shall not be preiudiciall to the franchises of Lords touching forfeitures due to them. By the foresaid two Statutes of 2.Ed.3. and 12.R.2. it doth appeare, that the meaning of the makers of those lawes was, not onely to preserue peace, & eschew quarrels, but also to take away the instruments of fighting and battery, and to cut off all meanes that may tend in affray or feare of the people. St.12.R.2. 12.

Assurances made by menace. 10 As menace of life and member giueth cause of an action of trespasse, to him that receiueth losse or hurt thereby, and intituleth the king to a fine: in like sort an obligation, a release, or deed of annuitie made, and graunted by menace, are voidable by the law, so that the same menace be of life, member, or liberty: viz. of some hurt to be done to his body by death, maiheming, or imprisonment, and not to his lands or goods: for if A. will menace B. that if he will not make him an obligation of twenty pounds, that then he will disseise him of such land, or dispossesse or take from him such goods: in this case if B. do make & deliuer the said obligation of twenty pounds to A. in an action of debt brought by A. against B. vpon the said obligation, B. shall not auoid this obligation, in respect of this menace, because this menace did not tend to the hurt of the person of B. but to preiudice him in his lands, or goodes: for the redresse and recouery whereof, the law would haue giuen B. a sufficient remedie, if A. should haue done him the wrong which hee menaced. 20.Ass.p.14 28.H.6.8. 7.Ed.4.21. 4.H.4.2. 39.H.6. 51.

And

And he that will take an aduantage to auoid his déed by menace, must in this plea expresse, how and in what sort the other party did menace him: viz. that he drew his sword against him, and threatned to kill him, if he would not seale and deliuer such an obligation, release, annuitie, &c. If A. do menace B. in one county, that he will kill or maihem him, if he do not seale him an obligation of xx. l, or stand to the arbitrement of C. in a cause depending in question betweene them: And after B. being at liberty in another county doth seale the same obligation, or doth stand to the arbitrement of C. this obligation or arbitrement is void, for it shall be intended to be done by force of the first menace. And if A. do menace B. that he will kill him, imprison, maihem, or beate him, if he do not make an obligation of xx. l to C. if in this case B. do become bound by obligation to pay vnto C. xx. l, in an action of debt brought vpon this obligation by C. against B. the same B. may auoid this obligation which he made by this menace of A. though the menace was made by one man, and the obligation was made to another, for that the menace was the cause of the making of this obligation, which the law doth respect and punish, and not only the party to whom the obligation was made.

Fitz. Dure 13.
33. H. 6. 24
2. H. 5. 10.
39. H. 9. 36
Co. lib. 2. 9.

11 Assault & batterie be for the most part an accomplishment of that which menace did threaten, and a performance by déedes of that, which the other forewarned by words: that is to say, a violent and forcible abusing, or attempting to abuse by blowes and stripes the person of an other, contrary to the peace of the Realme, and the law of the same, which hath ordained, that no person shall be Iudge or reuenger of his owne wrong, but leaue that to the censure of the law, that is alwayes ready to heare and redresse euery mans iust complaints: for hée that doth attempt to assault or beate an other, to satisfie his owne turbulent spirit, or to reuenge his owne priuat iniurie, doth as much as in him lieth to wrest the sword of gouernement out of the Kings hands, to take from the law her equall censure in iustice, and to make himselfe both Iudge, and executioner in his owne cause, and because this disordered person contemning the iustice of the law, hath assaulted or beaten an other without warrant of law, and broken thereby the peace of the realme, the law hath deuised a quiet and peaceable course, to reduce him againe to order, in punishing him by an action of Trespas of assault and batterie, wherein being conuicted, he shall satisfie the party grieued his damages, and pay to the king a fine, and his bodie shall be committed to prison, vntill he hath satisfied it. Though the party menaced shall not haue his remedy by action of Trespasse, vnlesse the same menace was of life and member, and also that the party menaced receiued some losse or preiudice thereby in his liuelihood, or estate, for that the menace, and the hurt which the party doth receiue thereby, being ioyned together do make the trespasse, and giue cause of the action of trespas: Yet in an action of Trespas of Assault and battery, where it is proued and found, that the offendor did make an assault onely (as one did strike at an other with a hatchet) but did make no battery, or hurt the person of any other, it is otherwise: for séeing assaulting doth tend to the breach of the peace, and hée that maketh an assault, doth his indeuour to hurt, the law doth giue to him that is assaulted an action of Trespas to recouer his damages, and to the king a fine: for by the assault, the party assaulted is put in feare, euill handled, and hindered of his businesse. And if hée be diuers times assaulted, hée may haue one action of Trespasse for all those assaults, and shall recouer damages, according to the number and grieuousnesse of them. And for an assault made

what is assault and batterie.

22. Ass. p. 60
42. Ed. 3. 7.
40. Ed. 3. 40
6. H. 7. 1.
45. Ed. 3. 24

made to the wife, the husband and the wife shall haue an action of Trespas a- 22.Ass.p.60
gainst him that made the assault, and the declaration shall be ad damnum ip- 46.Ed.3.6.
sorum, though the husband onely shall recouer the damages.

Iustifying of beating in his own defence.

12 But as he that is assaulted or beaten, shal haue his remedy by action of Trespas against him that did assault or beat him; and also the king shall haue a fine therefore, if he that made the assault or battery did it without cause, and offered therein iniury to the party assaulted, because the kings peace is bro- 16.Ed.4.11.
ken, and one member of the common weale hath abused and done wrong to 19.H.6.47.
an other: So on the other side, if he that was so assaulted or beaten, did first 6.H.7.1.
make an assault vpon him that after did beat him, and would haue beaten, 34.H.6.15.
wounded, or &c. and in his said assault did receiue from the other some stripes 43.Ed.3.23.
or blowes, the defendant may iustifie his said assault and battery, as a thing done in defence of his owne person from imminent and present perill, and wherein the Law will protect and defend him: And therefore in that case the defendant doth answer the plaintifs declaration, & pleadeth in barre, that the plaintife did assault him, and would haue beaten him, & he defended himselfe, and the hurt which the plaintife receiued was by his owne assault. And the plaintife in his replication doth plead, that the defendant did with force and armes, and of his owne wrong, make assault vpon him, beate him, and euill intreate him, contrary to the kings peace, without any such cause, as the defendant hath alledged: And so the issue is ioyned, whether the assault was begun and made by the plaintife vpon the defendant, or by the defendant vpon the plaintife: for if the assault and batterie, or assault only was first made 38.Ed.3.6.
and begun by the defendant vpon the plaintife; Then the defendant did it with force and arms, and against the kings peace, & is to answer damages to the plaintif, according to the hurt which he receiued, & to pay a fine to the king for vsing force & violence, and breaking his peace: for at all times in an action of Trespas vi & armis brought against any person, if the defendāt be conuict, 19.H.6.8.
he shall pay a fine to the king. But if the plaintife made the first assault, & the 8.Ed.4.15.
defendant in his owne defence (and rather than he would be beaten or wounded) did beat, strike, or wound the plaintif, Then the plaintife shall recouer no damages against the defendant, but shall be amerced to the king for his false suit: Neither shal the defendant be charged to pay to the king any fine. And if one man wil assault, and offer to beate y, iij, or more persons, & they in their 12.Ed.4.6.
owne defence do beate or wound him, he shall haue no action of Trespas or other remedy against them, & one of them may defend and help the other. But it is to be obserued in this case, that if one man do assault another, if he which is assaulted may escape with his life, or without being wounded or maimed, 2.H.4.8.
it is not lawfull for him to beate or wound the other who made the assault. 33.H.6.18.

Iustifying of beating in defence of others

13 As the law doth accompt it no breach of the peace for one man to beate an other in the defence of his own person from killing, wounding, or beating, but a thing iustifiable: So doth she impute it no fault punishable for the husband to beate him, that doth assault, & would beate, wound, or euill intreat his 19.H.6.31.
wife, being both one flesh: or for the wife to beate him, that doth assault, and 66.
would beate, wound, or euill intreate her husband: Or for the sonne or daugh- Lib.inf.553.
ter to beate him that doth assault, & would beat, wound, or euil intreate his or her father or mother: or for the father or mother to beat him that doth assault, Lib.inf.554.
and would beate, wound, or euil intreat his or her son or daughter, being then within age, & not able to defend him or her selfe: Or for the Lord to beat him, that

that doth assault, and would beate, wound or euill intreat his villaine: Or for
35.H.6.51. 11.H.6.19. 12.Ed.4.6. the seruant to beate, him that doth assault, & would beate, wound, or euill intreate his master or mistris, or to take any weapons wherewith the assailant would beat, wound, or euil intreat his master, & to kæp them vntil his rage be swaged; for the seruant is bound to performe vnto his master and mistris protection and duty, and he may kil a man in defence of his master, if his said master cannot otherwise escape. But the seruant cannot iustifie the beating of
21.H.8.39. 9.Ed.4.48. him, that doth assault, and attempteth to beate, wound, or euill intreat the father, mother, brother, sister, son, or daughter of his master or mistris, for he oweth no obedience or duty to any of them. Neither can the master iustifie the
Fitz. Iustification 3. 19.H.6.30. 66. beating of him, that doth assault, and would beate, wound, or euill intreat his seruant. But though the master cannot assault and beat another that doth assault, and would beat, wound, or otherwise euill intreat his seruant: Yet hæ may with a sword, staffe, or other weapon aide and defend his seruant assaulted, from being beaten, and that in respect of the losse of his seruice: And also af-
22.H.6.43. 21.H.6.9. Fitz. Trespas 46. 20.H.7.5. Coke.lib.5. 108. ter his seruant is beaten, he may haue an action of Trespas against him that did beat, wound, or euill intreat his said seruant (vnles it were vpon the same seruants owne assault) and recouer so much in damages against the offendor, as he receiued preiudice, or hinderance by the losse of his said seruants seruice: for if the seruant be but so beaten, that he is able to do his seruice, as well as he was before, the master shall recouer no damages for that beating. And as the master may haue an action of trespas against the offendor, & recouer so much in damages as he doth lose by the want of his said seruants seruice: so likewise the same seruant may haue another action of trespas against the offendor, and recouer so much in damages, as he shall receiue hurt on his bodie, by the said assault and beating. In an action of trespas brought by the master for beating of his seruant, whereby he did lose his seruice, it is a good plea for the defendãt to say, that he was not the plaintifes seruant, or that he was the defendants seruant, and not the plaintifes: or that he was farmor, tenant, neighbour, or soiourner with the plaintife, and not his seruant: or that the party beaten was the plaintifes wife. And in the said action of trespas of assault and batterie for the beating of his seruant, he næd not declare of the retainer of the same seruant, for if he did but serue his master at his pleasure, yet the master shal haue an action of trespas for the losse of his seruice.

The masters remedy for the beating of his seruant.

Fitz. Trespas 210. 21.H.6.8. 3.H.6.54. 34.H.6.28. 43. 22.H.6.43.

14 As the law doth allow a man to beate another in defence of his person, from extreame peril: so doth she tollerate one man to beat another for the preseruation of his goods from rapine and spoile: for as it standeth not with the peace of the realme, that one man without some lawful cause should beat another: so it standeth not with the iustice of the realme, that one man should take

Battery in defence of his goods.

9.E.4.28. 19.H.6.31. 65. Kel.p.92. anothers goods iniuriously from him. And he that wil attempt by force and violence to take away another mans goods wrongfully from him, may iustly by force & strong hand be resisted: And if in that case he that shall make an assault to take those goods, be in the encounter beaten by the owner of the same goods, the law will excuse the owner therin, & protect him to defend those goods, whereof he hath a lawfull property. And the same law is, if a man hath no propertie in goods, but onely a possession by the bailement of another, to be redelinered when they shall be required: if in this case a stranger will assay by force to take
Lib.Inf 553 the same away, he that hath the possession of the same goods (though it be but a bloodhound) may defend the same by force: And if the said stranger shalbe hurt or beaten in that assault, he shall haue no remedy by action of trespas, or otherwise,

wise, against him that had the said possession, for he may iustifie the defence of the goodes so bailed vnto him, in respect that hee hath the lawfull possession of them, and standeth chargeable to redeliuer them, or the very value of them to him, that bailed them vnto him, whensoeuer he shall be required. And so it is

Batterie in defence of his land, lease, or way.

if one hath a mill whereunto a riuer or spring of water doth run, and hath run time out of the remembrance of man, and another would stoppe the course of that water, and turne it another way, and the owner of the mill doth disturbe him therein, whereupon that other doth assault and attempt to beat him: In this case, if the owner of the mill for his owne safegard, and for the defence of his auntient water course, doth beat him againe, it is iustifiable: for this beating was not an intended breach of the peace, but to defend him from violence offered to his person, and iniury to his freehold or terme. And the same law is in euery case of battery of another, who doth menace or assault the right owner, and attempt to beat him for the lawfull defence of his owne freehold, or terme, or from his lawfull high way.

3.H.4.9.

Lib.Intr. 554. 11.H.6.33. 10.Ed.4.6.

Battery in resisting a Iustice of peace.

15 If one man do make assault vpon another attempting to beat him, & so to breake the peace, if a Iustice of peace do command him that maketh the assault to keep the peace, & to surcease his assault, and he will not do it, or wil answer that he will not: the Iustice of peace may lay his hãds vpon the offendor, and arrest him to find sureties of his good behauior: and if the offendor do make rescue, and resist the arrest by force, & then be beaten, he shall haue no remedy against the same Iustice of peace, who hath done nothing but that which belonged to his office, and duty: and the offendor first in breaking the peace, and after in resisting the iustice of the Law, being beaten by the Iustice of peace, or any other in his company, hath worthily tasted the due reward of his owne disobedience. And also the Iustice of peace may in this case commit the offendor to prison, vntill he hath found sureties to keep the peace. A Iustice of peace may arrest one to find surety of peace, and though he doth let the same party after to go at liberty, without finding surety of peace, yet he shall haue no actiõ or other remedy to punish the same Iustice, because he is Iustice of Record.

9.Ed.4.3.

21.H.7.22. 9.Ed.4.3.

A schoolemaster beateth his scholler.

16 In an action of trespasse of assault and batterie, it is a good plea for the defendant to plead, that he is a schoolemaster, and a teacher and instructer of children, and that the plaintife put himselfe to be scholler with him, and to be taught and instructed in his booke: and because the plaintife was careleese and negligent in learning of that whereof he was instructed, or did beat and abuse other schollers his schoole-fellows, the defendant did beat him with a rod, as it was lawfull for him to do.

21.Ed.4.6. Li.Intr.555

A master beateth his prentice.

17 And likewise in an action of trespasse of assault and batterie, it is a good plea for the defendant to plead, that he is a free man of the citie of London, occupying the trade of a draper: and that the plaintife being aboue the age of 14 yeres, put himself apprentise vnto him, to serue him in that trade, by the space of vij. yeres: And because the plaintife was negligent in learning his trade, he did strip him, and beat him with a rod, as it was lawful for him to do: and if he did not sufficiently beat him for his offence at one time, he may beat him againe: And in like sort, if a villaine wil not be iustified by his Lord, nor obedient vnto him, it is lawfull for the Lord to chastise and beat him, or to imprison him, or to inflict any reasonable punishmẽt vpon him, so that he do not maihem or kill him: for in the foresaid cases, the schoolemaster, master, and Lord haue a

21.Ed.4.6. & 53.

ciuill

ciuill power and auctho:ity ouer the ſcholler, ſeruant and villaine. Some doe hold, that if an app:entice o:̄ ſeruant be aboue the age of xxj. years, & then do his ſeruice negligently, that his maſter ought not to beat him therfo:e, but to haue an action of couenāt againſt him. But note the fo:me of the Indenture of an app:entice touching chaſtiſing him: And it appeareth by the Statute of 33. H. 8. 12. that the maſter may ſtrike his ſeruant with his hand, fiſt, ſmal ſtaffe, o:̄ ſticke fo:̄ co:rection, and though he do d:aw blo:d. S. Br. 28.

Stat. 33. H. 8. 12.

18 If a man be franticke, furious, o:̄ mad, & attempteth being at liberty to burne an houſe, o:̄ to do ſome other miſchiefe, o:̄ to hurt himſelfe, o:̄ others: it is lawfull fo:̄ his parents, kinſmen, and other freinds, to take him, put him into an houſe, to bind him, and to beat him with rods, & to do any other fo:cible act to reclaime him, o:̄ to kéep him in a houſe o:̄ place alone, where he ſhall do no hurt: And he ſhal haue no action of treſpaſſe of aſſault and battery, action of falſe imp:iſonment, no:̄ other remedy againſt them: fo:̄ in this caſe, and the others be fo:e rehearſed, the peace of the realme was not b:oken, but a lawfull puniſhment was inflicted vpon thoſe who had deſerued it, to the end they ſhould be refo:med, and hereafter doe their duties the better.

22. Aſſiſ. p. 56. 22. E. 4. 45.

Beating of a man that is franticke.

19 If one man do enter a plaint, againſt another in a court hauing iuriſdiction to hold plea of that ſuit, & the Sergeant of the court doth arreſt the defendant, and the defendant will d:aw his ſw:o:d to defend himſelfe, and after doth run a way, with intent to eſcape from the Sergeant, if in this caſe, the Sergeant and he that did enter the plaint, do purſue him, beat, & hurt him, if he will not be app:ehended and yéld to the arreſt, they may iuſtify the ſame in an action of Treſpas of aſſault and battery; fo:̄ they haue not b:oken the peace, no:̄ offended the Law, in ſéking to iuſtify him, who doth attempt to flie from the iuſtice and indifferent triall of the law. But if the party had not bén arreſted, the Sergeant, no:̄ any other with him could haue iuſtified the beating of him.

2. E. 4. 6. 21. H. 7. 39.

Beating of one, that will not yeld to arreſt.

20 In an action of Treſpas of aſſault & battery, the defendant pleaded, that the plaintife was his ſeruant retained, & departed out of his ſeruice, and that he laid hold vpon him, and led him home to his houſe to doe his ſeruice: But this was adiudged no plea; fo:̄ it is not lawfull fo:̄ the Maſter in this caſe to beat, o:̄ fo:cibly to compell his ſeruant againſt his will to returne and do his ſeruice; but to require him to do it, and if he will not, then the Maſter may haue an action of Couenant againſt his ſeruant, and recouer ſo much in damages, as he hath receiued hinderance by the loſſe of his ſeruice. But by the ſtatute made An' 5. Eliz. it is o:deined, That if any ſeruant retained to ſerue in huſbando:y, ſhall depart from his maſter, miſtreſſe, o:̄ dames ſeruice, be fo:e the end of his terme, vnleſſe it be fo:̄ ſome reaſonable and ſufficient cauſe to be allowed by a Iuſtice of peace of the County, o:̄ the Mai o:̄, o:̄ other head officer of the City, bo:ough, o:̄ towne co:po:at, wherein the ſaid Maſter, miſtreſſe, o:̄ dame inhabiteth: O:̄ if any ſeruant at the end of his terme depart from his maſter, miſtreſſe, o:̄ dames ſeruice, without one quarters warning giuen be fo:e the end of his terme, and be fo:e two lawfull witneſſes; Then vpon complaint made by the ſaid Maſter, &c. to two Iuſtices of peace of the County, o:̄ to the Mai o:̄, o:̄ head officer of the citie, bo:ough, &c. they o:̄ any of them ſhall haue power to heare and examine the matter, and finding the ſaid ſeruant o:̄ the party ſo refuſing, faulty in the p:emiſſes, vpon ſuch

38. H. 6. 25. Sta. 5. El. 4.

Beating of a ſeruāt departing out of his ſeruice.

prowes and good matter, as to their discretions shall be thought sufficient, to commit him to ward, there to remaine without baile or mainprise, vntill he shall be bound to the party to whom the offence shall be made, to continue with him for the wages limitted by this statute, and then to be discharged vpon his deliuerie, without paying any fee to the Gaoler where he shall be so imprisoned. And as the Master cannot by beating, nor by force compell his seruant, to serue him against his will: No more can a Lord compell his ward, by beating, or by force to come vnto him, or to tarie with him against his will: But if he doe depart from him, then the Lord is to haue his action against him.

A Gardian may not beat his ward. 38.H.6.25. 22.Ass.p.85.

Commaundement of batterie. 21 If A. commaund, procure, or hyre B. to smite, or beate C. and he doth assault and beate C. in the presence of A. In this case, C. may haue an action of Trespas of assault and batterie against A. and recouer dammages against him, or against A. and B. together; for here the peace was broken, and wrong done to C. by the meanes and perswasion of A. And B. had not striken with his weapon, if A. had not first stricken with his tongue. And the same law is, if A. go to fight with C. and desireth B. to go with him, and after doth meete with C. and doth assault and beate him; In this case C. may haue an action of Trespas against A. & B. together, or against B. alone, though B. did not assault C. nor giue him any blow, and recouer dammages against him, because he came in company with one, that intended to breake the peace, and to do an vnlawfull act. 22.Ass.pla. 59. 27 Ass p 4. Fitz. Trespas 138. 21.H.6.39.

Hurting at some exercise. 22 If two or more do agree together to runne at tilt, iuste, barriers: or to play at Backsword, bucklers, swtebal, or such like, and one of them doth beat, bruise, or wound an other; the party greiued shal not haue an actiõ of Trespas of assault & batterie against the other: for that it was a cõbate by cõsent, & put in practise to try their strength, valor, or agility, & not to breake the peace. But if the same day or some other after ỹ the pastime is at an end, & they departed asunder, one will assault or beat an other, in respect of some wrong conceiued to be receiued in the time of the said play; thẽ an action of Trespas of assault & battery may be pursued by him that is so beaten against the trespassor. Fitz. barre 244

Whipping of a Vagabond. 23 In an action of Trespas of assault & battery, it is a good plea for the defendant, to plead, that the plaintif was by the stat made An. 39. El. (intituled an Act for punishmt of Rogues, Vagabonds, & sturdy beggers (declared to be a Rogue, Vagabond, or sturdy begger, & that he was taken begging, vagrãt, & misordering himselfe at L. in the County of N. & that vpon his apprehension, by the appointment of A. B. one of the Iustices of peace of the said County of N. or of the Constable, Headborough, or Tithingman of the same parish of L. he was by this defendant stripped naked from the middle vpward, & openly whipped vntill his body was bloudy. And the same law is if any Iustice of peace, Maior, Bailise, or other head officer shall commit any offendor which shall cutt, or vnlawlly take away any corne or graine growing: or robbe any orchards or gardens, or breake or cut any hedge, pales, rails, or fence, or dig, pul vp, or take vp any fruit trees, or trees in any orchard, garden or elsewhere, to the intent to take & cary the same away: Or shall cut or spoile any woods, or vnderwods, poles, or trees standing, not being felony by the Lawes of this Realm: Or shall be a procuror or receitor knowing the same (contrary to the statute therefore made An. 43. El. intituled, an act to auoid & prevent diuers misdemeanors Sta. 39. El. 4. Sta. 43. El. 7.

miſdemeanors in lewd & idle perſons) ſhalbe committed by a J. of Peace, or by a head officer of a city, borough &c. to ſome Conſtable or other inferior officer of the, city borough, Towne, or Hamlet, where the offēce ſhal be committed, or the party apprehended, to be whipped. If in this caſe the ſaide Conſtable, or other inferior officer ſhal whip the ſame offendor vntill his body ſhalbe bloudy: the ſame offendor ſhall neither haue an action of Treſpas of aſſault & battery, nor other remedy againſt the ſaid Conſtable or officer: for in the foreſaid caſes, & in al other caſes, where an offendor is puniſhed for petit Larceny by whipping, & for other offences by the pillory, the ſtocks, the tumbrell, or otherwiſe, for any offence committed by him contrary to any of the Lawes or ſtatutes of the Realme, there is no peace broken, nor blame to be imputed to him or them which do execute that puniſhment; for it is the iuſtice of the law, which doth inflict thoſe puniſhments vpon offendors for tranſgreſſing the law, & the executioners of thoſe puniſhments be but the inſtruments of the law; as the axe is in the Carpenters hand.

Puniſhments by the order of law.

21.H.7.39. Fitz. Treſpas 108.

24 In an action of Treſpas of aſſault & battery, it is a good plea for the def. to plead, that he had a warrant to arreſt the plaintife, and that by force of that warrant he did arreſt him, & then the plaintif made aſſault vpon him, & therefore the hurt which he receiued, was by his owne aſſault: for euery ſubiect is bound to obey the K. writs, & al mandates, precepts, & warrants awarded by his Iuſtices, ſhirifes & officers ſufficiently authoriſed: And he that doth reſiſt them, or denieth to obey them, encountreth the iuſtice of the law; & therefore the beating of him who refuſeth to ſubmit himſelf to the obediēce of the Law, is no breach of the peace, but a meane to performe the law.

Battery for diſobeying of a writ or warrant.

25 Though the Law hath a regard to preſerue peace betwēn al perſons, and in all places, and carieth a vigilant eye, that one perſon ſhal not menace, aſſault, beate, maihem, or impriſon an other (but in certaine caſes, and for ſome ſpecial cauſes) and impoſeth an heauie burden vpon ſuch as ſhal breake that peace by any of the meanes aforeſaid; Yet ſhe hath a more ſpeciall reſpect to ſome certaine places, to ſome tymes, and to ſome perſons; and carieth that reuerend and due care and conſideration of them, that ſhe inflicteth a more ſharpe and bitter puniſhment vpon ſuch as ſhall violate the peace in them, or to the offence of them. And therefore for the auoiding of the diſturbance of the peace in the Church (where God is to be honoured and al peace to be preſerued) and to continue peace to prieſts, clerks, and others, whileſt they are

Sta.50.E.3. 1.1.R.2.15.

dwing diuine ſeruice; There was a ſtatute made Anno 50.E.3. and after reherſed and continued Anno 1.R.2: whereby it was enacted; That if any of the Kings officers, or other perſon, doe arreſt any prieſt, clerke, or other, which is doing any diuine ſeruice in the Church, Churchyard, or other place dedicated to God, he ſhall be impriſoned, and puniſhed at the Kings pleaſure, and further ſhall recompence the party arreſted. But no people of the Church, ſhall keepe them within the Church, or Sanctuarie by fraud or colluſion.

Arreſting one in a Church dwing diuine ſeruice.

26 And becauſe it is moſt neceſſarie in euery Chriſtian common weale to prouide that peace and tranquility may be preſerued & continued among the people, and ſpecially in holy Church in the time of diuine ſeruice, & preaching, and that all things being contrary thereunto, or that are or may be in

Sta.1.M.3.

diſturbance thereof may by foreſight be eſchewed and auoyded, and remedy

therefore prouided: By a like statute made An. 1. Reg. M. it was ordeined, St. 1. M. 3.
That if any person of his owne authoritie, shall willingly and of purpose by
Disturbance of a preacher in his sermon. open words or deeds, maliciously or contemptuously disturbe, or by any other
vnlawfull wayes disquiet or misuse any Preacher allowed to preach by the
quæne, or by any Archbishop or Bishop of this realme, or by any other law-
full Ordinarie, or by any of the Vniuersities of Oxford & Cambridge, or o-
therwise lawfully authorized, or charged by reason of his cure, benefice, or
spirituall promotion, or charge, in his open sermon, preaching, or collation,
that he shall preach or pronounce in any Church, Chappell, or Churchyard,
or in any other place vsed or appointed: then euery such offendor, his aydors,
procurors, or abettors, immediatly after any of the said misdemeanors com-
mitted, or at any time after, shal be arrested by any Constable or Churchwar-
den of the said parish, town, or place where the said offence shal be so commit-
ted, or by any other officer, or by any other person then being present at the
time of the said offence, and carried to any Justice of peace within the said
shire, or within any City, borough, Liberty or towne corporat, wherein Iust.
of P. be, where the said offence shalbe so committed: And the said Iustices vp-
on due accusations thereupon made by the apprehendor, or other person, of
the offendor, forthwith shal commit him to safe keeping: & within 6. daies im-
mediatly after the said accusation so made, the said Iust. with one other
Iust. of P. within the shire, city, borough, liberty, or town corporat shall dili-
gently examine the offence aforesaid. And if the said two Iustices shall vpon
their examinatiō find the person so accused guiltie of any of the said offences,
whereof he shal be accused, & that by two sufficient witnesses, or by his con-
fession: then they shall commit him to the Gaole of the said Shire, City, Bo-
rough &c. where the offence was committed; there to remaine without baile
or mainprise by the space of three moneths then next ensuing, & further to the
next quarter sessions &c. at which sessions the said person vpon his reconcilia-
tion & repentance before the said Iustices at the said sessions, shal be delinered
out of prison vpon sufficient surety of his good abearing & behauior, to be then
and there taken by the said Iustices for one whole yeare then next ensuing,
as by the discretion of the said Iustices then and there being, or of the more
part of them shall be thought conuenient. And if the said person will not be
reconciled, and repent at the saide quarter sessions, then he shall be further
committed to the said Gaole by the said Iustices; there to remaine without
Rescuing the offendor, or disturbing the arrest. baile or mainprise, vntill he shall be reconciled and be penitent &c. And if
any person or persons of their owne authoritie willingly and vnlawfull-
ly doe rescue any offendor so apprehended, or will disturbe the said offendor
to be apprehended; then euery of the said Rescuers or disturbers shall suffer
like imprisonment as is aforesaid, and further shall pay for euery of his of-
The punishment of the Town where the offendor doth scape. fences v. l. to the Quæne. If any of the offendors aforesaid be not appre-
hended in time conuenient but doe escape, then the said escape shall be law-
fully presented before the Iustices of peace at the next quarter sessions &c.
and the Inhabitants of the parish where the said escape was suffred, shal for-
feite to the Quæne &c. for euery such offence v. l. to be leuied and taken as
other like amerciaments and fines be leuied vpon any village, hundred, or
towne, for the escape of any murderer, or other felon, for not making pursuit
Punishment by Ecclesiasticall lawes. vpon hue and cry, according to the Statute of Wincheſter, and the statute
of 3. H. 7. 1. This Act shall not extend to take away the authority and pu-
nishment of the Ecclesiasticall lawes standing in force, for the punishment
of any of the offences aforesaid: But they shall be vsed in euery thing, as
though

though this act had neuer bin made. Whatſoeuer perſon offending in the premiſſes, ſhal for any the offences afore recited, receiue puniſhment of the Ordinary, hauing Teſtimoniall thereof vnder the ſaid Ordinaries ſeale, ſhall not for the ſaid offence eftſones be conuicted before the Juſtices: Et è conuerſo.

27 To the intent vtterly to take away al quarrelling, brawling, fraying, and fighting openly in Churches and Churchyards, by a ſtatute made An. 5. & 6. E. 6. it was ordained; That if any perſon whatſoeuer doe by words only quarrell, chide, or brawle in any Church or Churchyard; Then it ſhall be lawfull to the Ordinary of the place, where the offence is done, and proued by two lawfull witneſſes, to ſuſpend him being a Layman ab ingreſſu Eccleſiæ, and being a clerke from the Miniſtration of his office, ſo long as he thinketh méete, according to the fault. And if any perſon or perſons ſhall ſmite or lay any violent hands vpon any other, either in any Church, or Churchyard; then ipſo facto euery perſon ſo offending ſhall be deemed excommunicat, and be excluded from the fellowſhip and company of Chriſts congregation. And if any perſon ſhall maliciouſly ſtrike any perſon with any weapon in any Church or Churchyard, or ſhall draw any weapon in any Church or Churchyard, to the intent to ſtrike an other with the ſame weapon; thé euery perſon ſo offending, and thereof being conuicted by verdict of xij. men, or by his owne confeſſion, or by two lawfull witneſſes before the Juſtices of aſſiſe, Juſtices of oyer and determiner, or Juſtices of peace in their ſeſſions, ſhall be adiudged by the ſame Juſtices before whom ſuch perſon ſhall be conuicted, to haue one of his eares cut off. And if the perſon or perſons ſo offending haue none eares, whereby they ſhould receiue ſuch puniſhment, as is aforeſaid; Then he or they to be marked & burned in the cheeke with an hot yron hauing the letter F. whereby he or they may be knowne & taken for fray makers, and fighters; & beſides that, euery ſuch perſon to be & ſtand ipſo facto excommunicated as is aforeſaid.

5 & 6. E. 6. c. 4.

Chiding in a Church or Churchyard.

Smiting in a Church or Churchyard.

Drawing or ſmiting with a weapon in a Church.

28 As the law hath alwaies had a principall and moſt ſpecial regard, that there ſhould be no breach, or diſturbance of the peace, to thoſe perſons, places, and tymes, which be dedicated and deuoted to the ſeruice of God, to the Miniſtration of his Sacraments, and preaching of his worde: So hath ſhe a ſecondarie reſpect, that the King the head of the Realme and chiefe fountaine of peace, may haue tranquility and peace, at the time, and the place, where he doth reſt, and in perſon make his abode: whereupon by a Statute made Anno 33. H. 8. it was enacted, That if any perſon ſhall maliciouſly ſtrike any other perſon, whereby blood ſhal be ſhed in any of the Kings houſes or palaces, or in any other houſe, where the Kings Maieſtie his heires &c. ſhall be at that tyme abiding in his royall perſon, (viz. within any edifices, courts, places, gardens, orchards, or houſes within the Porters warde of any the houſes abouerehearſed, or within any gardens, priuy walkes, orchards, tilyards, woodyards, tennis playes, cockfights, bowling alleys, neare adioyning to any of the houſes aforeſaid, and being part of the ſame, or within 200. foote of the ſtandard of any outward gate or gates of any of the ſaid houſes, commonly vſed for paſſage from any of the houſes &c. and ſhall be thereof indicted, arraigned, and attainted according to the Statute in that caſe prouided, he ſhall haue his right hand ſtricken off, be impriſoned during his life, and make fine to the King at his pleaſure. But this act, nor the paines and forfaitures before rehearſed, ſhall not extend to any Noble man, or

33. H. 8. 12.

Drawing of blood within the Kings palace.

other person that shall strike his seruant within the said palaces or houses, or the limits of the same, with his hand, or fist, or any small staffe, or sticke for correction for any offence committed; Nor to any of the Kings officers, that in executing his office shall strike any person with his hand or fist, or small staffe, sticke, or tipstaffe; Nor to any other person, that in doing seruice at any triumph, or any other time of seruice, by the King, or any of his Councell, or other his head officers commaundement, shall for the executing of his saide seruice, strike any person, with his hand, fist, small staffe, or sticke, or any tipstaffe within the same palace, house &c. although by reason of the same stroake or stroakes there happen to be any bloud shead of such person as shall be so stricken, except the person so stricken dye of the same stroake within one yeare next after. Long time before the making of this stat King Alured ordeined a law, That if any man did strike or draw a weapon of iron to strike in the Kings palace, the King might, if he pleased, put him to death. Leges Aluredi cap. 7.

29 Because they which vpon the Kings commaundement do come to his councell, or vpon his summons doe resort to his Parliament, doe make their repaire thither to further the wealth and peace of the Realme; it hath ben therefore thought reason that during the time of the said councel e Parliament they should not be depriued of that peace which they endeaour to procure to others and themselues. Wherefore by a Statute made Anno 11. H. 6. it was ordeined: That if any assault or fray be made vpon any Lord Spiritual, or Temporall, Knight of the Shire, Citizen, or Burgesse, which commeth to the Parliament, or to the Kings Councell by his commandement, and there being and attending; then Proclamation shal be made in the most open place of the Towne where the fray was made by three seuerall dayes, that the partie which made such affraye or assault shal yeld himselfe in the Kings Bench within a quarter of a yeare next after the Proclamation made, if it be in the Terme time, or otherwise at the first day of the Terme following the said quarter. And if he doe not, he shall be attainted of the deede, and pay to the party grieued his double dammages, to be tazed by the discretion of the Iustices of the same bench, or by the inquest if it be needfull, and shall make fine and ransom at the Kings pleasure. And if he come, and be found guiltie by inquest, by examination, or otherwise, of such affray or assault, then he shall pay to the party grieued his double dammages found by the inquest, or to be tazed by the discretion of the said Iustices, and make fine and ransom at the Kings pleasure. And by the Statute made Anno 5. H. 4. it was enacted, That he shal haue the like punishment which maketh assaut or fray, in the Parliament tyme, vpon any meniall seruant of any Knight of the Parliament, Citizen, Burgesse &c. which doth come to the Parliament with his master. And by the Statute of Anno 8. H. 6. it was prouided, That all the Clergie, which be called to the conuocation by the Kings writ, and all their seruants, and familiars, shall fully vse and enioy such libertie, or defence, in comming, tarying, and returning, as the great men and Commons of the Realme haue, or are wont, or ought to enioy, which are called to the Parliament.

Assault vpon one which commeth to the Parliament. St. 11. H. 6. 11

Assaulting the seruant of a Parliament man. St. 5. H. 4. 8.

The libertie of the Clergie at a conuocation. St. 8. H. 6. 1.

30 Seeing the wealth and peace of the Realme doth chiefely consist in the due execution of iustice, which cannot be ministred without meete persons, and places ordeined therefore, for that cause the law hath specially prouided, that

that those persons and places which be designed to the same Administration of iustice, shall be so guarded and protected from force and violence offered vnto them, or in them, that shee hath inflicted deeper and more grieuous punishments to those who shall breake or disturbe the peace, in the presence of those Magistrates, or in those places, than to them who shal breake the peace in the Kings own palace, where he is in person abiding, or in the Parliament time ordeined for the making of Laws. And therefore it hath been adiudged, That if one draw his sword to strike a Iustice assigned sitting in place of iudgement, & be thereof found guilty, he shal forfeite his lands & chattels, & haue his right hand cut off. And likewise if one in the presence of the Iustices do strike a Iuror, he shall forfeit his lands & goods, haue his right hand stricken off, & be committed to perpetuall prison. And the same Law is, if one of the Kings Iustices assigned doth arrest any person, which hath made a fray before him, & a stranger will rescue that prisoner, whereby he doth escape, in this case as well the prisoner, as he that made the rescous shall be disherited, & be perpetually imprisoned, for that the attachmẽt of such a Iustice is the Kings owne attachment in the construction of the Law. And if one do strike another in Westminster Hall, during the time that the Kings Courts do sit, hee shall forfeit to the King his lands & goods, haue his right hand cut off, and be committed to perpetuall prison.

22.Ed.3.f.13.

Assaulting a Iudge or Iuror.

Fitz.Cor.280. 2.& 3.P.& M Dyer 188.

Striking in time or place of iustice.

4.H.7.2.

31 In an action of Trespas of assault and battery, the defendant pleaded, that there were diuers felonies committed in those parts where he dwelt, & he being watching in his house, came into the high Streete, where the plaintife was at eleuen of the clocke in the night, & the defendant came vnto him, and laid his hands in peaceable maner vpon him to see his face, and when he perceiued that he was a true man, he left him & departed, which was the same assault and battery: And this was allowed to be a good iustification; for by the statute of Winchester, watchmen may arrest Nightwalkers, and also may appose them from whence they come, and what they bee; but they must be such watchmen, as be appointed by the Towne: And so every man may arrest Nightwalkers, for it is for the good of the Common wealth. The same

4.H.7.18. 5.H7.5. 2.Ed.4.8.

law is in an action of Trespas brought of the assault and battery of his seruant, whereby he did lose his seruice 3. daies, and the defendant pleaded, that A. was robbed at midnight, of goods to the value xl. s. whereupon the said A. came to the Constable, & prayed him to search for suspicious persons, and to apprehend and arrest them, and accordingly he did search, and found the same seruant walking suspitiously in the street in the night, and therefore he would haue arrested him, but the said seruant fled and would not yeeld to the arrest, and the defendant by the Constables commaundement pursued and take him: This was adiudged a good plea in barre, for when a felony is committed, the Constable, or any others may arrest suspicious persons: and if any that is arrested will not yeeld, but assault him or them that do arrest him, they may iustifie the beating of him, for that he doth resist the peace, and iustice of the Realme, when he doth forcibly striue to flie, & not to be iustified by it.

Arresting by watchmen.

32 If a man be assaulted and beaten, and then be outlawed in an action of Trespas, and after doth purchase his Charter of pardon, which is allowed, he may haue an action of Trespas against the offendor for the assault & batterie made before the Outlawrie, for the said outlawrie shall not extinguish his

30.Ed.3.4. 29.Ass.p.63. 28.Ed.3.92. 4.H.4.7.

Trespas for batterie before outlawrie.

his action, nor cause that offence, which before was punishable to be vnpunished: And if the person beaten should not haue his Action, the iniurie done vnto him should be vnpunished: for the King shal haue no remedy to recouer damages for this battery done to the person of him that was outlawed, as he might haue had, if any debt had bin owing, or any goods had bin taken from the outlaw before his outlawrie: And the Law doth expect, that for the peace broken, & the wrong done to the party greiued, the same party shall vpon his action of Trespas brought, be recompenced by the recouery of his dammages, & the king satisfied for his peace broken by a fine. 29. Ass. p. 47. 63.

A man first indicted of batterie, and after sued for the same trespas.

33 In an action of Trespas of assault and battery, the defendant pleaded not guiltie, the plaintife replied, that the defendant was before that time indicted before the Justices of Peace of the same Countie, of the said assault & batterie, and thereupon proces was awarded against him for the kings fine, who then appeared, and pleaded, that the hurt which the plaintife receiued was by his owne assault, and thereupon they were at issue, and before the verdict, the defendant appeared, and confessed the Trespas, and submitted himselfe to the kings fauour, and made his fine, and demaunded iudgement, if he should be allowed to plead not guiltie, contrarie to his owne confession: and this was adiudged a good Replication, and an Estoppell of the said plea in barre. And then the defendant pleaded, that the hurt which the plaintife receiued was by his owne assault, vpon which plea the plaintif demurred, seeing the defendant before had pleaded that plea against the King. And then he also wained that plea, & confessed the trespas: whereupon a writ was awarded to inquire of damages. And so for this assault & batterie the king was first intituled to a fine by the Indictment, & after the party greiued recouered damages by an action of Trespas. 11. H. 4. 65. 9. H. 6. 60. 27. Ass. p. 57

What imprisonment is.

34 Imprisonment is where a man is arrested by force, & against his will, and is restrained of his libertie, & put in a common Gaole, or other gaole, in a cage, or in the stockes, or otherwise kept in the high streete, or open field, if he be in restraint, and cannot go at liberti when he will, but is bound to become obedient to the will of the Law, and is in the custodie of the Law. And in all the cases afore said, the party so restrained, is said to be a prisoner, so long as he hath not his liberty, freely to go at all times, when he will, without baile, mainprise, or other restraint: And therefore if one person do arrest, imprison, or otherwise restraine an other person of that liberty, without sufficient and lawfull cause, the party greiued may haue an action of False imprisonment, or an action of Trespas against him that doth so arrest, or imprison him, and recouer damages against him. And the king shall also haue a fine of him, for that his law is contemned, and his peace is broken, in that one of his subiects presumeth to imprison an other without sufficient warrant of him, or his law; seeing imprisonment of an other by only act, will, or commandement (without offence of the Law) is one of the kings most royall prerogatiues, and only annexed to the maiestie, dignitie, and imperiall Crowne of the Realme: For by the Statute of Magna charta it was specially ordeined, That no man shal be taken or imprisoned, or disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other waies destroyed, neither shal any passe or sit in iudgement vpon him, but by lawfull iudgement of his Peeres, or by the Law of the land. And by the Statute of An. 28. Ed. 3. it was enacted, That no man shall be put out of his land or tenement, nor imprysoned, nor disherited, Lib. Intrac. fo. 319.

An action of False imprisonment.

St. 9. H. 3. 29.

St. 28. Ed. 3. 3.

diſherited, nor put to death, without being brought to aunſwere by due proces of the Law. And therefore whereas the Maior and Burgeſſes of a towne corporate (being before authorized by the Kings letters patents to make ordinances for the good gouernmt of the ſame Towne) did condiſcend amongſt
Co. Lib. 5. 64. themſelues, to leuie a ſumme of money for the charges of a lawfull & neceſſary act to be done in the ſame Towne, and did further agree, that if any of them did refuſe to pay his part of that contribution money ſo aſſeſſed, to be paied, that then he ſhould be committed to priſon vntill he had paid it: and after one of the Burgeſſes of the Towne which before had agreed to the ſame aſſeſſemt & ordinance, refuſed to pay the money which he was by the reſidue aſſigned and aſſeſſed to pay: whereupon the Maior of the ſame Towne committed him to priſon, againſt whom the ſame Burgeſſe brought his action of falſe impriſonment, and recouered dammages againſt the ſame Maior: for though the ſame Burgeſſe, & all others of the ſame Corporation, might haue ſubmitted himſelfe to haue paid a ſumme of money, to haue bẽn leuied by diſtreſſe, or action of debt, if he or they had not performed the ſame order, & payd his part of that contribution: yet the libertie or impriſonment of his bodie reſteth in the cenſure & iudgement of the Law, and not in his owne diſpoſition. As if B. do promiſe C. or be bound by Obligation vnto him, that if he do not paie vnto the ſame C. xx. li. within ſixe monethes, that then C. ſhall take & impriſon him, vntill he hath paied it: notwithſtanding B. do not pay to C. the ſame xx. l. at the time aſſeſſed, C. may not impriſon B. for it, though it was his owne promiſe, agreement, or bond: for that B. is not iudged by his peeres, or condemned by the law of the land according to the foreſaid ſtatut of Magna Charta. Neither is he brought to anſwere by due Proces of the law according to the purport of the before ſpecified ſtatute of An. 28. E. 3.

Voluntarie conſent, no cauſe of impriſonment.

35 But in many caſes one perſon may arreſt, impriſon and reſtraine an other of his libertie and no action of falſe impriſonment, action of Treſpas, or other remedie will be had againſt him. As, firſt it is a lawfull impriſonment which is done by the abſolute commaundement of the King, the chiefe Soueraigne head of the common weale by his owne mouth, or by the priuie Councell, (which ſpeake and direct by his Authoritie) or by the abſolute commaundement of the Kings Juſtices: Or for the forreſt: Or for the deteſtable offence of wilfull murder. And the common law doth prohibit the priſoner to be mainpernable in all the foreſaid caſes, as it appeareth by the ſtatute of
St. 3. E. 1. 15. Weſtm' 1.

Impriſonmẽt by the commaundement of the King, his Juſtices, &c.

36 He is lawfully impriſoned as a ſpeciall diſturber of the peace, who is committed to priſon, for any great and notorious offence, viz. ſuch as we do call Mala per ſe, which be hated abhorred, and perſecuted in all Kingdomes, Prouinces, Cities, and well gouerned common weales: As Treaſons, murders, rapes, burglaries, robberies &c. And it appeareth by the ſtatute
St. 3. E. 1. 15. of Weſt. 1. that he is lawfully impriſoned which before was outlawed: And he which is an appriouer: And that felon which is taken with the manner: And he which hath broken the Kings priſon: And he which is a theefe openly defamed, and knowen: And he which is appelled by an appriour: And he which is taken for burning of a houſe feloniouſly done: Or for falſe money: Or for counterfeiting the Kings ſeale: And he which is excommunicat taken at the Biſhops requeſt: And he which is taken for a manifeſt offence, or for Treaſon touching the King: in which ſaid caſes the offendor ſhall be committed

Impriſonmẽt for notorious & great offences.

ted to prison and not be let to baile or mainprise. And if any person shall be once conuicted that he did take vpon him by witchcraft, inchantmēt, charme, or sorcery to declare in what place any treasure of gold or siluer might be had, or where things lost or stollen, should be found, or to the intent to prouoke any person to vnlawfull loue, or whereby any cattel or goods of any person shall be destroyed, wasted, or impaired, or to hurt or destroy any person in his or her body, although the same be not effected: Then he shall suffer imprison-ment one whole yeare without baile, or mainprise, and shall stand vpon the Pillory &c. for he that declareth the things aforesaid, by any of the meanes aforesaid, receiueth his knowledge therein, and practiseth to effect the same, by the inspiration of the Deuill, the professed enemy of mans peace, and so committeth a great and notorious offence, and worthily deserueth impri-sonment.

St. 1. Iac. 12

Witchcraft, charme, sorcery.

S. Felony by Statute.

37 He is lawfully imprisoned who is found by verdict, or by his owne con-fession conuicted for any offence done vi et armis & against the Kings peace: for the law hath ordained that al things shal be done, and all sutes prosecuted betwéne one member of the common weale & an other with all tranquilitie and quietnes, and he that doth any thing in perturbation of that tranquility, breaketh the Kings peace, & so shall be committed to prison, as a disturber of the peace, vntill he hath paied vnto the King a fine. And therefore in an action of Trespas or false imprisonment, if the plaintife do declare against the defendant, that he did such an offence, or made such a trespas, vi & armis & contra pacem, the defendant doth first and principally séeke to auoyd that, to cleare himselfe of force, and the breach of the peace, and doth plead thereunto Quoad venire vi & armis et quicquid est contra pacem non est culpabilis &c. Accordingly in an Assise brought against foure men, it was found by verdict that one of them came with force and armes, and al foure were committed to prison because in Trespas all be principals, and none be accessories; and yet if any of them had bin within age, thē he should not haue bēn imprisoned. But if a woman couert be found a disseisoresse with force, she shall be committed to prison: And if an action of Trespas of battery be brought against the hus-band and wife, and it be found by verdict that the wife was guilty of the bat-tery, but not the husband, the wife shall be imprisoned, and not the husband. If he that is proued to be a disseisor in an assise be found to haue carried away any goods, this is an attainder of force, & he shall be imprisoned without fur-ther inquiry of the force, for so it is ordayned by the statute of An. 4. H. 4. If a man do giue councel to others to do a disseisin with force, whereby they do it, this shall be adiudged a disseisin in him, and he shall be imprisoned. In an As-sise if the defendant do plead a plea wherein an Ouster is not denied, which is found against him, he shall be imprisoned, though he doth not confesse the Ouster: And he that confesseth an Ouster, if the Issue be found against him, shalbe imprisoned. In an action of Trespas brought for fishing by force and armes in his seuerall fishing, the defendant was found guilty, and was com-mitted to prison. In an assise of rent charge against three terre-tenāts, it was found that the rent was behinde, and the plaintife distrained, and one of them made rescous, and therefore they were all adiudged disseisors but none were imprisoned but he that made the Rescous. And in euery case of force where any Trespas is found vi & armis, false imprisonment, or assise, the iudge-ment shall be, quod defend' capiatur, for he shal be imprisoned for the Kings fine, and when he doth pay the Kings fine he shall be deliuered.

Imprisonmēt for offences done vi & ar-mis.

2. Ass. p. 8.
12. Ass. plac. 33.
14. E. 3. 18.
16. Ass. p. 7.
22. ass. p. 87.
11. H. 4. 17.
St. 4. H. 4. 8.
17. Ass. pla. 14.
28. Ass. p. 15
40. Ass. pla. 16.
19. H. 6. 8.
39. Ass. p. 4.
9. Ass. p. 7.
22. Ass. p. 87.

38 As one person may be imprisoned who menaceth, assaulteth, or beateth the person of an other, or with force and armes entreth vpon his lands or tenements or violently taketh away his goods or chattels; so by the statute of Anno 2. H. 5. where three persons or more be attainted of great and heynous Riots, they shall haue one whole yeares imprisonment at the least, without being deliuered by baile or mainprise, or in any other māner during the said yeare: And if the Rioters be attainted of petit Riots, they shall haue imprisonment as the King and his Councell shall thinke good. And by the statute made Anno 1. M. it was enacted, that if any persons aboue the number of two, and vnder the number of twelue being assembled together, shall intende, practise, or put in vre, with force of armes vnlawfully, to murder any of the kings subiects, or to breake downe the pales, hedges, ditches, walls, or other inclosure of any parke or other ground inclosed, or the bancke of any fish pond or poole, to the intent the same should remaine open, or to dos any other vnlawful act, prohibited by that statut, and being required by a Iustice of peace, or shirife of the said County, or by the Maior or chiefe officer of the city or towne corporat to returne to their inhabitations, do not, but attempt to put in vre any of the said things. Then euery of the same persons shall be imprisoned one yeare without baile or mainprise: for the offendors in both the cases aforesaid, putting in practise their outrages with a multitude of persons bee great disturbers of the peace, and Transgressours of the law.

Stat. 2. H. 5. 8. 8. Riots 11. — Imprisonment for Riots.

Stat. 1. M. 12. 8. Riots 36.

39 In an action of False imprisonment, the defendant pleaded that the plaintife held the manor of D. by force & V. C. a Iustice of peace of the same County did take him, recorded the force, and sent him to the defendant being Gaoler of the same County to be imprisoned, and this was allowed a good iustification, though he was committed to prison but by one Iustice of peace. And in like sort if the action of False imprisonment had bin brought against the Iustice of peace who committed the offendor to warde, the same had been a good plea in barre for him, for that the statute of An. 8. H. 6. doth warrant him so to do, & giueth that authority to one Iustice alone, or to more then one.

21. H. 6. 5. — Imprisoning him that holdeth land with force.

Stat. 8. H. 6. 9.

40 If a Huy and Cry be leuied and pursued that a horse of such a color or marke, so many beasts of such a sort, or age, or so many sheepe of such a brand be stolen, & one is taken leading or driuing of the said horses, beasts, or sheepe: it is lawfull for any man to apprehend and stay him, & to commit him to the Constables of the Towne where he is apprehended, & by them to be put into the stockes, or safe kept, vntill he be deliuered by due course of law, though he be not of euill fame, or name, but a man of good credite: for seeing the law by the Huy & Cry hath accused him, by a course of the law, he must be againe acquited and discharged: And in this case he that is so take though he be after acquit of the felony, shal not haue an action of Trespas, False imprisonment, or other remedy against him, that did apprehend him.

29. Ed. 3. 9. 5. H. 7. 4. — Imprisoning of one pursued by Huy & crie.

41 In an action of Trespas of assault, battery and imprisonment, the defendant pleaded that the plaintife menaced to kill him, and therefore requested the Constables to arrest the plaintife to find sureties of his good abearing, and the Constables, and the defendant with them, did come and arrest him, and put him into the stockes vntill he did find sureties: and this was allowed to be a good iustificatiō. And in like sort if one do make an assault vpon a Constable,

Fitz. Barre 202. 3. H. 4. 9. — Imprisoning him that doth breake the peace.

5. H. 7. 6.

a Constable, the same Constable may arrest and imprison him, vntill he hath found sueties to keepe the peace, though the Constable be the same perſō vpon whom the said assault was made: for in this case he doth nothing but preserue the peace, and obserue the Law, which is to be done aswell in his owne case, as any others: And moreouer if a Constable be informed, that a lewd man is in a suspected house, with a woman of euill name, for incontinency, he may take so many of his neighbors with him as he will, and arrest the saide man and woman to find sueties of their good behauior. And they, nor either of them shall haue any action of False imprisonment or other action therefore against the said Constable, or any other of his assistants; for the Constable was ordeyned to keepe the peace, and to represse felons. And he may take suerty by Obligation, if he find any committing of a fray, but vpon no penalty. And if the party will not find sueties, the Constable may imprison him, vntill he hath found sueties.

Arresting suspected persons.

13.H.7.10.

10.Ed.4.17

Imprisoning him that doth attempt to rob.

42 In an action of Trespas of assault, battery, and imprisonment, the defendant pleaded, that the plaintif lay in waite in a highway leading from the towne of A. to the towne of B. to rob such persons as trauailed in that way, and assaulted to rob one L. and drew his sword, and commanded the same L. to deliuer his purse, whereupon L. fled and leuied Huy and Cry, and this defendant being trauailing that way, pursued the plaintife, and toke him, and committed him to the Cōstable to be put in the stockes, who did it accordingly: and this was adiudged a good iustification: for euery man may arrest and imprison him that doth commit a felony, or him who maketh it apparant, that he doth intend, and goe about to commit a felony; for that he doth manifest himselfe to be a principall breaker of the law and peace of the realme.

9.Ed.4.26.

Assisting to arrest by warrant.

43 In an action of false imprisonment against two, one of them pleaded that he had a precept to arrest the plaintife which he did accordingly. And the other defendant pleaded that he came in company with the other to ayde and assist him to arrest the plaintife. And this was allowed a good Iustification in them both: for any straunger may assist a Sherife his Baylifes, or any other that hath auctority to execute the Kings writs or proces, & he that will not assist him being required shall paie a fine to the King: And the Sherife may take as many persons as he wil to aide him to execute the Kings writs, for it is in furtherance of iustice and no breach of the peace.

19.H.6.43.
56.

3.H.7.7.
17.E.4.5.

Breaking a house to arrest

44 If a man be indicted of Trespas, and a Capias pro fine awarded to the Sherife to take the body of the same person, The Sherife may breake open his house, or close to arrest and imprison him, & it is a lawfull imprisonment. But the Sherife may not breake any house or chest to make executiō by vertue of a Fieri facias to him directed. S. Force 32.

27.Ass.plac.35.
18.E.4.4.

The Sherife arresteth and doth not retorne his writ

45 If the Serife haue a Capias to arrest a man, and he doth arrest him, and after doth not retorne his writ, the party arrested may haue an action of false imprisonment against the Sherife, & recouer damages for his wrongfull arrest or Imprisonment: for the Capias is, ita quod habeas corpus eius &c. and so if he haue not the parties body in the Kings Court at the day of the retorne of the writ, it shall be intended that he did not arrest him by force of that writ, nor according to the purport of it, but of his owne wrong. But if the Sherifes Baylie do arrest the man, and the Sherife doth not retorne the writ,

11.H.4.58.
21.H.7.32.

writ, the party arreſted ſhall not haue an action of falſe impriſonment againſt the Bailie: for the Sheriffes offence ſhall not preiudice the Bailie, and the Bailie cannot compell the Sherife to returne the writ: for a Sherife or a Bailie errant which is knowen and ſworne may arreſt a man without ſhewing his warrant, for euery man is bound to take knowledge of them: but where the Sherife doth make a precept to another to arreſt, he muſt ſhew his warrant. And if a Capias be awarded to the Sherife without an originall to take a man, and he doth take him, yet the party greeued ſhall not haue his action of falſe impriſonment againſt the Sherife, for that he did it by warrant of the kings writ, for it is a good plea in an action of Falſe impriſonment to ſay that he is Sherife of the county of M. and that he did arreſt the plaintife by force of a Capias directed to him, which is the ſame impriſonment.

A knowne officer may arreſt without ſhewing his warrant.

21.H.7.22.
11.H.4.36.

Arreſting a man by a Capias without an originall.

22.Ed.4.47.

46 In an action of Falſe impriſonment, it is no plea for the defendant to plead, that it was told him, that the plaintife had brought cattel to the towne, and put them in a blind corner, and that there was great cauſe of ſuſpition that the plaintife had ſtolne them, whereupon he did arreſt him: for ſuſpition onely without a felony committed, is no cauſe to arreſt another. But if a felony be done in thoſe parts, and one doth ſuſpect an other to haue committed the ſame felony, then he may arreſt him: for a Iuſtice of peace cannot arreſt an other of ſuſpition of felony, vnleſſe he himſelfe doth ſuſpect him to haue committed felonie: and ſo much an other may doe that doth ſuſpect one to haue committed felonie, viz. if he himſelfe doth ſuſpect him to haue committed the felony. The common voice and fame of the country is a great cauſe of ſuſpition of felonie where a felonie is committed. And therefore in an action of falſe Impriſonment, the defendant pleaded that there was a felonie committed, and the common voice and fame of the Countrey was, that the plaintife was a man of euill behauiour, and had done the ſame felonie: whereupon he that was robbed, came to the Conſtable and requeſted him to arreſt the plaintife, and the Conſtable came to the defendant and deſired him to aſſiſt him to arreſt the plaintife, the which he did, and they arreſted him. And this was allowed a good iuſtification, and ſufficient cauſe to arreſt the plaintife, ſeeing there was a robbery committed, and the common voice and fame of the countrey accuſed the plaintife thereof. And in like ſort in an action of falſe Impriſonment the defendant pleaded that I.S. was poyſoned, and that the common voyce and fame of the Countrey was, that the plaintife had poyſoned him, whereupon the defendant apprehended the plaintife, and committed him to priſon, as it was lawfull for him to doe: And this was alſo adiudged a good Plea in barre of the ſaid action, for ſeeing a felonie was committed, and the common voyce and fame of the Countrey had accuſed the plaintife thereof, euery perſon who him ſelfe hath ſuſpition that the plaintife hath committed the ſame felonie may arreſt him thereof. And ſo it is if in an action of falſe Impriſonment, the defendant doe pleade, that before the impriſonment A. B. was ſlaine at C. and the plaintife was in the company of thoſe who killed him at the time of the felony committed, and the common voyce and fame of the Country at C. was, that the plaintife was partie to the felonie, whereupon the defendant found the plaintife at C. and arreſted him for ſuſpition of felonie, and committed him to the Sherife, which is the ſame impriſonment. And this was allowed a good and ſufficient Plea and not double, though the defendant did alleadge the common voyce and fame of the Countrey, and the being in company with thoſe that killed A. B. for where a man

Arreſting vpon ſuſpition of felonie.

7.H.4.35.
27.H.8.23.

The common voice & fame of the country cauſe of ſuſpition.

2.H.7.15.
5.H.7.4.
11.Ed.4.4.

Suſpected of poyſoning.

5.H.7.4.

Suſpected of Manſlaughter.

7.Ed.4.10.
7.Eliz. Dy. 236.

doth iustifie for suspition of felony, he may shew as many causes of suspition as he can. And it is a good cause of suspition to say, that huy and crie was leuied after a felony committed, and that the plaintife was a man suspected, Or to say that the plaintife was a vagarant, exercising no trade to get his liuing by, and no labourer, Or to pleade that parcell of the goods stollen were taken in the possession of the plaintife.

Causes of suspition.

Arresting vpon doubts of Manslaughter.

47 In an action of false Imprisonment, the defendant pleaded that the plaintife had so beaten and wounded an other man, that he was in great perill and daunger of death, and that vpon the same huy and crie was leuied, whereupon the defendant being Constable did arrest and imprison the plaintife foure daies, vntill it might be knowne whether the party wounded were like to liue, or die, and when he perceiued that the party beaten was like to liue, he did let the plaintife goe at liberty: and this was adiudged a good plea in barre. And in the like case in an action of False imprisonment brought against one, the defendant pleaded, that the king had directed a Commission to certaine persons to apprehend those that were notoriously slaundered for felonies, or great trespasses, notwithstanding they were not indicted thereof, and that the plaintife had most daungerously wounded I. S. whereupon the Commissioners directed their warrant to the defendant, to apprehend the plaintife, which he did accordingly: and this was allowed a good iustification, and the plaintif was barred of his action: for in both these cases the peace was broken, and at the time of the arrest it was vncertaine whether the offence would proue felony or not.

38 Ed. 3. 6. 10. H. 7. 20. 14. Ed. 3. 5.

A Iustice of peace warrãt to arrest a felon.

48 In an action of False imprisonment, the defendant iustified, for that a Iustice of peace directed a warrant vnto him to arrest the plaintife for felonie, which hee did. And it was holden that a Iustice of peace cannot make a warrant to arrest a Felon, vnlesse hee be indicted, for hee is a Iudge of record, and hee must haue a record whereupon hee doth award his processe. But if a Bailife serue his warrant, it is a good iustification for him, though the Iustice of peace did erre in the awarding of the processe. And the same law is, if the Sherife doth erre in any warrant that hee doth direct to the Bailife of a Libertie.

14. H. 8. 16.

Arresting an offendor, & deliuering him to the Constable.

49 If a man do arrest an other, who he knoweth hath committed a robberie, manslaughter, or other felony, and doe deliuer him to the Constable to carrie to the gaole, and the Constable will set him at libertie, or doth not carrie him to the gaole, or that the same person arrested be rescued out of the possession or custody of him that did arrest him: yet in neither of the forsaid cases, he that was arrested shall haue an action of false Imprisonment against him that did arrest him, for that there was no default in him, that the offendor was not imprisoned according to his desert.

10. Ed. 4. 17.

Imprisonmẽt vntill he hath made an Obligation.

50 An action of false Imprisonment was brought for imprisoning the plaintife, vntill hee had made an Obligation of fortie pounds to the defendant and others vnknowen by dureſſe, and this was adiudged maintenable, for if the plaintife did not know their names, hee could not erpresse their names, for the Obligation is not the effect of this suit, but the imprisonment, and hee shal not recouer damages for the Obligation, but for the imprisonment, for that hee is not yet damnified by the Obligation; because when that

2. Ed. 4. 19.

that is sued, he may pleade, that it was made by duresse of imprisonment, and so auoide it. But if the action of False imprisonment be brought of an imprisonment vntill hee had made a fine, hee shall recouer dammages for both, for hee is presently greeued by the fine, and so is hee not by the Obligation.

22.E.4.45. 51 If a master do imprison a man in a house, and deliuer the key of the doore of that house to his seruant, the partie imprisoned cannot haue an action of False imprisonment against the said seruant for the keeping of the key. But if the seruant that hath the key do know that the same partie were wrongfully imprisoned, then he ought to let him go at libertie: for the seruant is bound to obey his masters commaundement, but in those things that be lawfull only. And if the seruant which kept the key did not know that the same partie was imprisoned in that house, then vpon his plea of not guiltie, he shall be excused in an action of False imprisonment brought against him by the partie imprisoned. The seruant not chargeable for the masters offence.

2.H.4.24. 52 If a writ of Natiuo habendo, or a Iusticies be directed to the Sherife, he cannot iustify the imprisonment of any man by force thereof, for they be but commissions to hold plea. And the body of a man shall not be arrested or taken, but by processe awarded out of a court of record, and by those Commissions the Sherifes court is not made a court of record. Imprisonmẽt by force of a Iusticies.

9.Ed.4.30. 53 In an action of False imprisonment, it is a good iustification for the defendant to pleade, that a Supplicauit came to the Sherife to apprehend the plaintife, who made his warrant to the defendant to take him, which he did accordingly. And yet the Sherife cannot giue his authority to another to take surety of him. A warrant vpon a Supplicauit.

5.H.7.6. 54 A Iustice of peace cannot direct a warrant to apprehend him who hath broken the peace, for he is to be punished by inditement, at the kings suit, or by action of Trespas of battery at the partie greeued his suit. But he may direct his warrant to apprehend him who he doth doubt meaneth to breake the peace in time to come, and to bring him before himselfe, or some other Iustice, or else to commit him to prison: for one Iustice of peace alone may doe his endeuour to preserue the peace before it be broken; but being once broken it must be punished by inditement in the presence of diuers Iustices of peace, or by action at the common Law. Arresting him who would breake the peace.

28.H.6.11. 55 If any seruant, workeman, or labourer, shall wilfully or maliciously make any assault or affray vpon his master, mistresse, or dame, or vpon anie other that shall at that time haue the charge or ouersight of him, or of the worke wherein he is appointed, or hired to worke, and being thereof conuicted before any two of the Iustices of peace, Mayor, or head officer of a towne corporat where the offence is committed, or before either of the Lords Presidents of the North, or Wales, by the confession of the said seruãt, workman, or labourer, or by the witnesse and oath of two honest men: Then euery such offendour shall suffer imprisonment by the space of one whole yeare, or lesse, by the discretion of two Iustices of peace (if it be without a towne corporat) and if it be within a towne corporat, then by the discretion of the maior or head officer of the same towne corporat, with two others of the discreetest Imprisonmẽt of a seruant for assaulting of his master.

persons of the same corporation at the least. And if the offence shall require further punishment, then to receive such other open punishment (so as it extend neither to life or limme) as the Justices of peace in open Sessions, or as the more part of them, or the said maior or head officers, or five, or foure at the least of the discrete persons of the same corporation, before whom the offence shall be examined shall thinke conuenient, for the qualitie of the said offence so committed.

Where imprisonment is lawfull, and where not.

56 By which foresaid cases, and many more, it appeareth that imprisonment is lawfull, and sufficiently authorized by the Common Lawes and statutes of this Realme in diuers respectes, and for many crimes, and there is by it no breach of the peace, nor offence to the Law, when it is inflicted by the warrant of the Law: for it aduaunceth as much the iustice and peace of the Realme to haue offendours punished, as to haue the innocent protected. But the imprisonment which tendeth to the breach of the peace, and the offence of the law is, when one person or more vpon his or their owne authoritie, either in reuenge of some supposed wrong receiued, or in hope of a priuat gaine expected, or for some other cause, will of his or their owne authoritie imprison or arrest another: for the redresse whereof the party greeued shall haue an action of False imprisonment, or an action of Trespasse, and recouer his dammages. And the same offendour which before did wrongfully imprison an other, shall then vpon his conuiction by verdict, or his owne confession, be himselfe lawfully imprisoned, vntill he hath paid to the King a fine.

Imprisonmẽt for offences done to the iustice of the Realme.

57 As in the cases aforesaid, imprisonment of offendors is both tollerable and requisit, when it is inflicted for misdemeanours done to the peace of the realme: so in many other cases it is as necessary whẽ it is imposed for offences done to the law & iustice of the realme, being the foundation and principal piller of the same peace, and without the due execution whereof there cannot be a generall and perfect peace. And amongst many other transgressors who do offend contrary to the iustice of the Realme, and yet in a sort doe preserue the peace, the law doth principally note foure kind of persons worthy for their offences to be imprisoned. Whereof the first be they who doe commit some acts that be wrongfull, iniurious, and prohibited by the common lawes, or statutes of the realme: The second be they who do attempt and prosecute vniust and wrongfull actions or suits, to molest, trouble, or charge others: The third be they who being impleaded vpon iust and good causes, do plead false, or dilatorie pleas, in retardation of iustice and hinderaunce of the due and ordinarie course of the law: The fourth be they who vpon stubbornnesse, contumacie, or wilfulnesse, refuse to doe that which they know the Law doth require at their hands, and may enforce them vnto: of euery of which amongst many, I will insert some few cases. As to the first, by the Statute of Anno 5. Eliza. he shall be imprisoned, and set vpon the pillorie, who doth falsly forge, or willingly assent, or cause to be forged, or made, any false deede, charter or writing sealed, Court Roll, or the will of any person in writing, to the intent that the estate of freehold or inheritance of any person in any lands should be recouered or charged &c. for forging of deeds is an iniurious and wrongful act, and alwaies hath been hated, detested, and persecuted in this realme. By the Statute of Westm. 2. If the maister doe assigne auditors to any Bailifes, Seruants, Chamberlaines, or other receiuors which are bound to yeelde accompt,

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4.
Imprisonmẽt for committing vnlawful acts.
1. Sta. 5. Eliz. 14
Forging of deeds.
5. Forgery. 3.
St. 13 E. 1. 11

compt, and it chance them to be found in arrerages (al things being to them allowed) they ſhall be arreſted, and by the teſtimony of thoſe auditors committed to the next Gaole which the king hath in thoſe parts, and ſhall be receiued by the Sherife, or his Gaoler, and priſoned, fettered in yrons, liuing of their owne goodes, vntill they haue fully ſatiſfied their maſter of all the arrerages, for detaining of the arrerages of an accompt is a plaine and manifeſt wrong to the maſter: and this impriſonment muſt be preſently after the accompt taken, and not any diſtance of time after. And he that doth a diſſeiſin, or maketh an entry contrary to his owne deede, Or is conuicted for the embezeling of an Exigent, or for ſome other notorious deceits, committeth open and manifeſt iniury, and therefore ſhall be impriſoned. If one man do make a leaſe of a tenement by writing to another for terme of life of the leſſee, whereupon the leſſee doth enter, and enioyeth it, and after the leſſor doth enter and diſſeiſe the leſſee for life, and then the leſſee do bring an Aſſiſe againſt the leſſor, and recouer againſt him the tenement leaſed: in this caſe the ſame leſſor ſhall be impriſoned, for that he made an entry contrary to his owne deed, and ſo willingly committed an open and manifeſt wrong. The ſame law is, if a man do make a diſſeiſin of land, of his whole title wherein he hath before made a releaſe or confirmation to the tenant of the ſame land, in this caſe he ſhall be impriſoned. And if a Gardian do take a feoffement of his wards land, being within age, he ſhall be impriſoned therefore, for this, and all the former be iniurious acts, and knowen to the offendours to be prohibited by the law.

Accomptants found in arrerages.

27.H.6.8.

Diſſeiſin contrarie to his owne leaſe.

14.Aſſ.p.12.

8.Aſſ.pla.20

28.Aſſ.pl.28

18.Aſſ.p.3.

Fitz.Aſſiſe 395.

2. As touching the ſecond point, they be alſo worthy to be impriſoned, who doe attempt or proſecute vnlawful ſuits, to the trouble and veration of others: As if one do bring an Appeale againſt another, and that appeale do abate by the plaintifes nonſuite, or by any other default of his, he ſhall be impriſoned. A woman brought an appeale of the death of her husband againſt one, who was attainted and hanged at her ſuit: and after ſhe brought an appeale againſt an other man of her ſaid husbands death, who pleaded the attainder of the firſt man in barre, wherupon the appeale was abated, and the woman committed to priſon for her wrongfull veration and ſuit. A woman brought an appeale againſt a man of the death of her husband, and her ſaid husband was brought into the court, and ſhe was examined if that were her husband, who ſaid yea, but ſhe ſuppoſed that he had beene dead, and therefore ſhe was impriſoned for her falſe appeale. If one doe bring an appeale againſt another, for a Murder, Burglarie, Robberie, or other felony committed in W. in the Countie of P. and there is no ſuch W. in that County, the appeale ſhal abate, and the plaintife ſhall be impriſoned: for it is manifeſt, that this ſuit was commenced vpon malice, and to put the defendant to veration and trouble, and not vpon anie iuſt cauſe.

50.Ed.3.21.

Impriſonmẽt for proſecuting vnlawfull ſuits.

9.H.4.2.

8.H.4.18.

3. Thirdly, they are worthy to be impriſoned, who do pleade falſe, or dilatory pleas, in hinderance of ſuits, and retardation of iuſtice. As if a man in his plea doe deny his owne deed: or do pleade a falſe deed made to himſelfe, which is found againſt him by verdict: or do pleade a deed that is raſed, enterlined, or otherwiſe ſuſpicious that is adiudged againſt him, he ſhall be impriſoned. By the ſtatute intituled De coniunctim feoffatis, if the tenant in Aſſiſe do plead iointenancie of the land in demaund with his wife, or a ſtranger, and sheweth a deed to teſtifie the ſame, to the intent to abate the plaintifes writ: and if it be found by the Aſſiſe that the exception was maliciouſly alleaged to delay the plaintifes right, the ſaid tenant ſhall be one yeere impriſoned, though the Aſſiſe paſſe for him againſt the plaintife. And if that tenant in the Aſſiſe be an Enfant, who doth pleade iointenancie, yet if that

Impriſonmẽt for falſe or dilatorie pleas.

33.H.6.54.
45 Ed.3.11.
6.Aſſ.pla.4.
24 Ed.3.74.
Sta.34.Ed.1.

Impriſonmẽt for falſe pleading of iointenancie.

plea be found against him, he shall be imprisoned: for that the said Statute is generall, and doth not except an Enfant. By the Statute of Westm 2. if he that is named a disseisour in an Assise, doe personally alleage any false exception, whereby the taking of the assise is deferred, viz. that at an other time an assise of the said tenements passed betweene the said parties, or that a writ of higher nature is depending betweene them of the said tenements, and doth vouch any rolls or records to warrant the same, and at the day giuen he faileth of his warrant, hee shall be adiudged a disseisour, without recognizance of the assise, and shall restore double dammages of that which shall be found, and for his falshood shall be one yeare imprisoned. And fourthly, a man in diuers cases shalbe imprisoned for his stubbornenesse, wilfulnesse, disobedience, and contempt to subiugate, and submit himselfe to the censure and iudgement of the Law, and to performe and accomplish that which the law doth expect at the hands of him and all others being in his case. As if a Quid iuris clamat, or Per quæ seruitia, be brought against a man, who doth appeare in Court, and will not attorne to the plaintife, nor pleade in barre, he shall be imprisoned for his stubbornenesse. And if the tenant that ought to doe homage or fealtie to his Lord, doe appeare in Court, and will not do such of the said seruices as be claimed of him, neither pleade in barre thereof, he shalbe imprisoned vntill he wil do his foresaid seruices, for his wilfull contempt of the law, & disobedience to iustice. And if a writ of Estrepement be directed to the Sherife to prohibit him to commit waste in lands against whom a reall action, or action of Waste is depending, for, or touching the same lands: the Sherife by force of the same writ may resist him who would do waste: and if he cannot otherwise redresse the offence, he may imprison him, and if need be, he may take the power of the County to assist him, for this disobeying of the kings writ, and resistance of the Sherife, is a wilfull frowardnes and contempt of the law in the offendor, and therefore he deserueth to taste the smart of the Law by imprisonment for his contumacie. And in like sort by the statute of Anno 27. H. 8. and Anno 32. H. 8. it was ordained, That if any person after sentence definitiue giuen against him, by the Ordinarie, his Commissary, or other competent minister, or lawfull Judge, doe obstinatly refuse to pay his Tithes, or dueties, or such summes of money adiudged, wherein he is condemned for the same: Then the Justices of the peace of the same shire (whereof one to be of the Quorum) shall haue authoritie vpon information, certificat, or complaint made in writing by the ecclesiasticall Judge that gaue the same sentence, to cause the same person so refusing to be attached, and committed to the next gaole, & there to remaine without baile or mainprise, vntil he hath found sufficient suerties to be bound by Recognizance, or otherwise, before the same Justices, to the vse of the King to performe the said sentence. In the same maner may any one of the Kings Councell, or two Justices of peace, vpon an Information or requeste made to them by the Ordinary, commit any offendor to ward, for any contempt, contumacie, disobedience, or any other misdemeanour of his in any suit for subtraction of Tythes, offerings, and other duties of the Church, vntill he hath found suerties &c. vt gladius gladium iuuet.

37. Ass. pla. 2
3. H. 6. 51
St 13. R. 2. 25

Imprisonmẽt for failing of a record pleaded.

Imprisonmẽt for not atturning.

Imprisonmẽt for not doing his true seruice.

Fitz. Per quæ seruitia 23.

Co. li. 5. 105.

Stat. 27. H. 8. 20.
St. 32. H. 8. 7

Imprisonmẽt for obstinat refusing to performe the Ordinaries sentence.

Stat. 27. H. 8. 20.

what is Watheming.

58 Watheming is an other greeuance in the Realme, and a speciall cause to disturbe the peace: And that is when one member of the Common weale shall take from an other member of the same, a naturall member of his bodie, or the vse and benefit thereof, and thereby disable him to serue the common weale by his weapons in the time of warre, or by his labour in the time of peace,

peace, and alſo diminiſheth the ſtrength of his body, and weaken him thereby to get his owne lyuing, and by that meanes the common weale is in a ſort deprined of the vſe of one of her members.

How many ſorts there be of maiheming.

59 This maiheming is a diſmembring of a man, or taking away ſome member, or part of his body, or the vſe thereof; As when a wound, blow, or hurt is giuen or done by one perſon or more to an other perſon, whereby he is the leſſe able to defend himſelfe in the time of warre, or to get his lyuing in time of peace: And therefore, if a man do put out the eye, or cut off the hand, or foote, or any ioynt of the hand or foote of an other, it is a Maihem, though it be done by chaunce medly. (But if one man of malice pretended, do cut out the tõgue, or put out the eys of any of the K. ſubiects, it is Felony) And if one man do cruſh the mouth, or head of an other, or breake out his forefore teeth, it is a maihem, for with them he may defend himſelfe in battaile: but to breake his hinder teeth, or to cut off his Noſe, or Eares, whereby he loſeth his hearing, is no maihem, but a deformitie, or blemiſh of his bodie, and no weakning of his ſtrength. It is a Maihem to put any bone out of a mans head, or to cut off any finger of a mans hand, or to breake any of them ſo, that they become ſhronke vp, or dried vp, or dead, or crooked. Gelding of a man is alſo a maihem; though it be in a ſecret place, yet it maketh him more feeble, & vnable to defend himſelfe in bataile, or to worke for his liuing. If by any wound receiued the ſinewes, or vaines of a man be ſhronke vp, it is a maihem. To cut off the cheeke or iawbone of any perſon, or ſo to cruſh, or breake any of them that the ſame perſon is the leſſe able to take his meate or drinke, is a maihem. If one perſon or more doe take an other perſon by force, and put him in the ſtockes or otherwiſe bind him faſt, and after poure ſo much ſkalding hote oyle, and vinegar, or hote melted lead, or other ſkalding licor, vpon any part of his body, and ſo continue it vntill it doth waſt and conſume the fleſh of the ſame part, and drie vp and mortifie the veynes and ſinewes of the ſame part, it is a maihem. If A. do ſtrike at B. and the weapon wherewith he ſtriketh, breaking, or falling out of his hand by the force of the blow doth put out the eys of D. this ſhall be adiudged a maihem, for that A. had an intention at the firſt to do ſome hurt in ſtriking at B.

Stat. 5. H. 4. 5.

Fitz. Corone 458.

28. E. 3. 94.

Li. Intf fo. 45.

Li. Intf fo. 45.

23. H. 7. 14.

Examination of a maihem.

60 The greatneſſe or ſmalnes of the wound in ſome of the caſes aforeſaid doth make the difference, whether it be a maihem or not, which is to be examined by the Juſtices of the court before whom the appeall of maiheim is depending, and by them to be decided, if they be requeſted by the defendant in the appeall and will condiſcend to do it. And they may award the Kings writ to the ſhirif of the county where the fact was done, to warn two expert ſurgeons of that Countie, citie, or towne, to appeare in the ſame court at a day prefired, to informe the court what they thinke of the wound, and whether they conceiue it to be a maihem or not: And if the wound be freſh, and new, and thereby hardly to be diſcerned, whether it will proue a maihem or not, the Juſtices nede not preſently to examine it though the defendant in an appeall of maihem doth deſire it, or notwithſtanding he doth plead that it is no maihem. And if in an appeall of maihem the defendant doth plead not guilty, without requeſting that the maihem may be examined by the court, by this the defendant hath allowed that it is a maihem. But if in an appeall of maihem the defendant doth pray that the maihem may be examined, if the Juſtices and the ſurgeons (that they will call vnto them) be in doubt whether it be a

28. Aſſ. p. 5.
28. E. 3. 94.
41. Aſſ. p. 27.
32. Aſſ. p. 82.
21. H. 7. 40.

be a maihem or not, the Justices may refuse the examination, and compell the defendant to put himselfe vpon the triall of the countrie: And yet in that case, if the defendant do praie that the maihem may be examined by the court, if the Justices do adiudge it a maihem, it is peremptorie to the defendant, for he shall not after plead not guilty, or any other plea in Barre, seeing by his plea he hath allowed it to be a maihem. But the court can not view the wound, and examin whether it be a maihem or not, vnlesse the defendant in the appeall will request it and referre it to their iudgement. If in an appeall of maihem the defendant doe plead not guiltie, without requesting that the maihem may be adiudged by the court, though the Iurie who are to try the issue doe desire to see the plaintife if he be maihemed or not, the plaintife neede not to shew his wound, for by pleading not guilty the defendant hath allowed that it is a maihem though he hath estraunged himselfe from the committing thereof. 6.H.7.1. 22.Ass.p.99. 28.Ass.p.8. 22.Ass.p.32.

Diuers appeals of maihē for one offence

61 If seuerall men do at one time assault one man, and one of them doth maihem him in one part of his body, and an other in an other part, he may haue seuerall appeals of Maihem against them: for that they be seuerall maihems which he hath receiued: And yet if seuerall men do murder or otherwise kill a man, there may be put one appeall of murder maintained against them all, for that a man can haue but one death. But if a man sue an appeall of maihem against seuerall persons, whereof against some as principals, and some others as accessories, and after apparance he is nonsuit, he can not pursue an other appeall of maihem against the same persons, and charge those as accessories, which before he had named principals, nor those principals who before were suggested to be accessories. 9.H.4.2. 40.Ass.p.2.

Principal and accessorie in maihem.

62 In an appeall of maihem the plaintife may chuse to make all principals, or els to make him principall that did first strike him, and the residue accessorie. The Law was holden in auncient time that the plaintife in an appeall of maihem, must haue declared against all the defendants as principals: But now he may chuse and make some principals, and some accessories: for an appeall of maihem is in effect but an action of Trespas wherein the plaintife shall recouer damages, according to the quality & quantity of the offence, and the defendant shall be imprisoned. And if the plaintife do bring an appeall of maihem whereas it doth appeare to the court that by the blow which was giuen him he is not maihemed, he shall pais a fine. 40.Ass.p.9. 41.Ass.p.16.

Maihem is a Trespas.

The iudgemēt in appeall of maihem. 8.H.4.21.

Mainprise in an appeall of maihem.

63 In an appeall of maihem, if it do appeare to the court that the maihem is very apparant, grieuous, bloudy, and extreame, as if a mans legges or armes be broken, or that the party maihemed is in great perill of death, the defendant shall not be let to mainprise, no more then he should be in an appeall of murder, or burglarie. But if the maihem be not apparant, or that it is doubtfull, and questionable whether it be a maihem or not, then the defendant in appeall of maihem may be let to mainprise. And that also appeareth by the statute intituled officium Coronatoris: whereby it is ordained, that vpon an appeall of maihem, if the wounds be mortall, they which be appealed shall forthwith be apprehended, and kept vntill it be knowen whether he that is hurt shall recouer or not: if he die, they shall be retrained, if he liue, they shall be attached by foure or fiue pledges according to the bignesse of the wound: if it be for a maihem then there shal be no lesse then foure pledges, if a small wound two will serue. 6.H.7.1. Stat.3.E.1.

64 In

40.Ass.pla. 40. 6.H.7.1.

64 In an appeall of maihem the plaintife doth declare that the defendant did maihem him felonice vt felo domini Regis: and so it may be called felony as petit Larcenie is called felony, or it may be termed felony, for that the blow which caused the maihem may be a meane of his death within the yeare and day after the stroke stricken, and then it wil be felony; or for that he which did giue the blow had then a murdring mind and so a felonious intent.

Why maihem is supposed to be done feloniously.

Li. Inst fo. 45.

65 It is a good plea in barre in an appeall of maihem for the defendant to plead, that the plaintife at the place aforesaid, and at the day & yeare aforesaid, did make assault vpon the defendant, and would haue beaten and killed him, vnlesse the defendant had then and there quickly defended himselfe against the plaintife, and so the hurt and dammage (if any were) that then and there did come to the plaintife was of the plaintifes one assault and in defence of the defendant. And likewise it is a good plea in barre in an appeall of maihem for the defendant to plead the plaintifes releals made vnto him after the supposed offence done of all actions personals, or of all actions, or of all appeales, or of all demands: for in this case the plaintife is but to recouer dammages.

Barres in appeal of Maihem.

Iustifying in his owne defence.

The plaintifes releasle.

7.H.4.30.

66 If an appeal of maihem be brought against diuers, & one of them doth appeare in court and confesse the maihem, & is committed to the Marshalsea, and the plaintife hath iudgement against him, he can not sue against the residue, vnlesse he wil suffer him that hath confessed the maihem to goe at liberty: for if he hath iudgement, and the body of him who confessed the maihem to remaine in prison, that shall be an execution for this whole maihem.

Execution in appeal of Maihem.

Fitzh. Coron 110. 22.Ass.p.82.

43.Ass.p.38.

41.Ass.p.16. Co.Lib.4 43.

67 The Sages and Iudges of the land in former ages did hold it for law, that if one doe assault, beate, and maihem an other, and the partie maihemed doth bring an appeall of maihem against the offendor, and recouer dammages against him, yet after he may haue an action of Trespas of assault and battery against the same offendor, and recouer dammages for his beating: and the recouerie of dammages in the appeal of maihem shalbe no plea in barre against the plaintife, for the appeal doth only meddle with the maiheming, & not with the beating. But if the plaintife do bring an appeal of maihem in the Kings bench, and after apparance be nonsuit in the same, and then doe bring an action of Trespas of assault and batterie for the same fact, Then the defendant may plead the same appeal and nonsuit in barre against the plaintife, and it is a good plea. But of late yeares, viz. Añ 31. Eliz. it was adiudged, that in this and all cases when the plaintife for one wrong and iniurie is but to recouer dammages, he shall not be for that cause satisfied twice for one offence: And in these two actions of appeall of maihem and trespas, the plaintife shall onely recouer dammages. And therefore it was adiudged a good plea in barre in an appeall of maihem to plead, that the plaintife had before brought an action of Trespas against the defendant of assault, battery, & wounding, and had recouered dammages therein, and to auerre that the same assault, batterie, and wounding, and this maiheming were all one offence.

In action of Trespas after an appeal of Maihem.

68 As the law hath prouided remedies to punish those who by menace, assault, battery, imprisonment, or maiheming, do breake the peace, So hath it alwaies had a vigilant eie by anticipation to preuent many others that would breake the peace by any of the meanes aforesaid, and therefore hath from age to age, appointed meet magistrates and watchmen, to whose charge specially (as

Restraint of affrayes by Iustices of peace.

(as selected Sentinels) the did commit the preseruation of the peace, who in times past before the raigne of king Edward the third were called Conseruators of the peace, and sithence they haue been termed Iustices of peace, because they be Iudges of record, or otherwise they be named Commissioners of the peace, because they haue & deriue their authority by the Kings Commission, who himselfe being the chiefe and generall Conseruator and Preseruer of the peace throughout all his Dominions, doth by his seuerall Commissions commit some particles of his authoritie, touching the continuance of the peace, and maintenance of certaine of his Lawes, to some chiefe and select men in all the parts of the Realme, whom he taketh to be the most meete men for the same, in respect of their integrity, wisdome, learning, courage, and liuelyhood. The forme of so much of which Commission as toucheth the Peace and good Abearing is this. Iacobus &c. prædilecto & fideli Conciliario nostro Thomæ Domino Eismere, dño Cancellario, necnon prędilectis A.B.C.D.E.F.G.H. I.L.M.N.O.P. &c. Sciatis quod assignauimus vos coniunctim & diuisim, & quemlibet vestrum Iusticiarios nostros ad pacem nostram in Comitatu nostro Buck. conseruand', ac ad omnia ordinationes & Statuta pro bono pacis nostræ, ac pro conseruatione eiusdem, & pro quieto regimine, & gubernatione populi nostri ædita in omnibus & singulis suis articulis in dicto comitatu nostro (tam infra libertates quam extra) iuxta vim, formam, & effectum eorundem custodiend', & custodire faciendum. Et ad omnes contra formam ordinationum vel Statutorum illorum aut eorum alicuius in comitatu prædicto delinquentes, castigandum & puniendum, prout secundum formam ordinationũ & Statutorum illorum fuerit faciendum. Et ad omnes illos qui alicui vel aliquibus de populo nostro de corporibus suis, vel de incendio domorũ suarum minas fecerint, ad sufficientem securitatẽ, de pace vel bono gestu suo, erga nos & populũ nostrum, inueniendam, coram vobis seu aliquo vestrũ venire faciẽdum: Et (si huiusmodi securitatem inuenire recusauerint) tunc eos in prisonis nostris (quousque huiusmodi securitatem inuenerint) saluo custodire faciendum. Et ideo vobis & cuilibet vestrum mandamus, quod circa custodiam pacis, ordinationũ, Statutorum, & omnium & singulorum cęterorum prędictorum diligenter intendatis; Et ad certos dies, & loca, quę vos vel aliqui duo, vel plures vestrũ (vt prędict' est) ad hoc prouideritis, super prędictis faciatis inquisitiones, & p̃dicta omnia & singula audiatis & terminetis, ac ea faciatis & expleatis in forma prędicta, factur inde quod ad justiciam pertinet, secundũ legem & consuetudinem Regni nri Angliæ: Saluis nobis amerciamentis, & alijs ad nos inde spectantibus.

Stat. 1. E. 3. cap. 16.

The Commission of the Peace.

69 And though there be many other offences mentioned in the said commission which the Iustices of peace are by force of the said Commission to enquire of, heare, and determin, and to punish the offendors therein, according to the lawes and Statutes of the Realme: Yet as it appeareth by the words of the said commission, the same hath his chiefe care & respect of the peace, and to the preseruation thereof. And to the intent that the said Iustices, or commissioners should the better remember and respect their charge and dutie, they are called Iustices or commissioners of the peace, and not commissioners of iustice, of conscience, or equitie &c. And so their names, together with their offices, and duties be in a sort written in their foreheads. And the restraining or punishment of all the other offences mencioned in the said commission, do only tend to the maintenance of iustice, the rote, foundation, and supporter of peace. And whereas the King by the words of the said Commission doth appoint the persons therein named his Iustices to preserue his peace, and

and to kéepe and cause to be kept, all ordinances and Statutes made for the conseruation of the peace, and the quiet gouernment of his people: These Statutes amongst many others chiefly be intended, the Statutes of An' 2. Ed.3. 18.Ed.3. & 34.Ed.3. by which it is ordained, that Iustices of peace shal haue power to heare and determine at the Kings suit all manner of felonies, and Trespasses, committed against the peace in the same County: and to restraine offendors, riotors, and all other Barretors, and to pursue, take, and chasten them, to imprison and punish them according to their Trespas and offence, and to reforme them according to the said Iustices discretion: And to inquire of all those that haue béen pillers and robbers beyond the Sea and be come againe, and goe wandring, and will not labour as they had wont to doe: And to take and arrest all those, which they can find by inditement or suspition, & to commit them to prison: And to take of all those which be not of good fame in the place where they remaine, sufficient suertie and maineprise of their good abearing or behauiour towards the King and his people, and the other dulie to punish, To the intent that the people be not by such Rioters troubled, or endammaged, nor the peace broken, nor any passengers by the way disturbed, or put in perill. But the fines which Iustices shall assesse vpon any person shall be reasonable, hauing regard to the quantity of the Trespas, and the cause.

The Commission doth chiefly respect the peace.

Sta.2.E.3.6. 18.E.3.2. 34.Ed.3.1.

Why they be called Iustices of Peace.

Winding persons suspected to their good behauior.

70 So that it appeareth both by the words of the said Commission of peace, and also by the foresaid Statutes, That a Iustice of peace by vertue of his office hath authoritie to preuent the breach of the peace, both by taking suerties for the kéeping of it, and for the good behauiour of the offendors, And that he may do either of his owne motion, or discretion, or els at the request or praier of an other. And by his owne discretion he may cause a common Barretor, Rioter, or one that maketh an affray in his presence, or other person to him suspected to be inclyned to the breach of the peace, or men menacing one to hurt or kill an other, or contending in hote words, to finde suertie of the peace. And he may perswade one man to require the suerties of peace against an other man, and he himselfe after may graunt it: for it is no more then he might haue done of his owne authoritie: which suertie of the peace, is a recognizance taken by the said Iustice of peace of the partie and his suerties to the King, for the keeping of the peace. And as a Iustice of peace may take this suertie of peace, or suertie of good abearing, as a Iudge by vertue of his office; So may he doe it as a minister by force of a Supplicauit directed vnto him out of the Chauncerie; in which case he is then only to direct his precept to compell the partie vpon the writ to finde suertie of the peace. Which Supplicauit out of the Chauncerie is sometime directed to one Iustice of peace alone, sometime to more, and sometime to the Shirife, and sometime to him with others: And then the same Iustice or Iustices of peace, or Shirife must make retorne of the said writ of Supplicauit, and a Certificat of his doing into the Court from whence the same was awarded. And if the said Iustice of peace shall take the said Recognizance for the keeping of the peace by vertue of his office, then by force of the Statute of Anno 3.H.7. he shall certifie, sende, or bring the same Recognizance at the nert Sessions of the peace where he is, or hath bin Iustice, that the party so bound may be called. And if the partie make default, the same then there to be recorded: And the same Recognizance with the record of that default shall be sent and certified into the Chauncerie, the Kings Bench, or into the Exchequer. And the suertie of good abearing is gran-

A Iustice taking suertie of the peace.

9.E.4.3.

What the suertie of the peace is.

Taking suertie of the peace by a Supplicauit.

Sta.3.H.7.1.

Certificat of a Recognizance

Suertie of good abearing.

granted by authority of the foresaid commission of peace, and by the warrant of the before rehearsed statut of 34.E.3. aswell as the suerty of peace is, and it is obtained for the preseruation of the peace, and it doth differ in nothing from that of the peace, but that there is more difficultie in the performance of it, and the party bound may soner slide into the perill and danger of it. The suerty of good abearing is most commonly granted in open sessions, or by two, or three Justices of Peace: Or vpon a Supplicauit, and great cause shewed, and proued, it is granted in the Chancery or Kings Bench. And though one Justice peace alone may grant it if he will, yet it is seldom done so, vnles it be to preuent some great, sodaine, and imminent enormity or danger. The suerty of peace is most times taken at the request of one for the preseruation of the peace chiefly against one. But the suerty of good abearing is oftentimes granted at the suit of diuers, and those must be men of credit, and to prouide for the saftie of many: for the effect and purport thereof is, that the partie bound shal demeane himselfe well in his port, behauiour, and company, and doe nothing that may be the cause of the breach of the peace, or in putting the people in feare or trouble: And it is chiefliie graunted against common Barretors, common riotors, common quarrellers, common peace breakers, & persons greatly defamed for resorting to houses suspected to maintaine incontinencie or adulterie, and against those that be generally feared to be robbers or spoilers of the Kings people, or which doe endamage, disturbe, trouble, or put in perill passengers by the way: And therefore if one doe exhibit Articles to Justices of peace against a certaine person, comprehending diuers great abuses, and misdemeanors, not onely touching the Petitioner himselfe, but many others, to the intent that the same person may be bound to his good behauior: in this case the party so accused shal not for any matter conteined in the said Article maintaine an action vpon the case; for the party or parties who exhibited the said Articles haue pursued an ordinarie course of Justice & nothing was attempted but the reformation of the mans conditions, and to haue the peace & good behauiour continued. And though this suerty of good abearing is chiefly prouided for the continuance of the peace, yet by force of seueral Statutes it is also graunted in some other cases. As if the King do graunt to any person a charter of pardon of any felony, then he shall come within three Monthes before the Shirife & Coroners of the same Countie where the felonie was done, and finde fire sufficient Mainpernours (for whom the said Shirife and Coronors will answere) that he from thencefoorth shall beare himselfe well & lawfully. And if any man disturbe a Preacher in his Sermon he shall be bound to his good abearing for one yeare. And he shall be bound to his good abearing for seauen yeares who doth vnlawfully hunt & steale deare, or conies or take away wrongfully any haukes egges, or shall vnlawfully distroy or breake the head or damme of any pond, pole, moate, stagne or shew whereas fish are put, or shall wrongfully fish in any of them, to the intent to steal or take away any of them against the will of the owner or possessor of the same, not hauing lawfull authoritie so to doe. And he shal be bound with two sufficient suerties in 200. l. to the good behauiour which doth absent himselfe from the Church by the space of twelue moneths &c.

Articles exhibited to haue good abearing granted.

Co.li.4.124.

The suertie of good abearing in other cases then for the peace.

St.10.E.3.3.

St.1.H.3.

St.3.Iac.19.

5.El.21.

St.23.El.1.

71 Because it appeareth by the words of the foresaid commission of peace, that the said Justices of peace shall cause al those to finde suerty of peace which doe threaten any of the Kings people to hurt them in body, or to burne their houses: Therefore all lay persons vnder the degree of Lords or Peeres of the Realme;

Realme; and also Ecclesiasticall persons, if they be not attendant upon divine seruice may be arrested to finde suerty for the peace. And if the husband do threaten to kill his wife, or outragiously to beate her, or that she hath any notorious cause to feare that he will doe so, she may demaund the suertie of the peace against him, and she shall haue it graunted. And in like sort and for the like causes may the husband demaund suertie of the peace against his wife, in which cals she her selfe shall not be bound, but others shalbe bound for her. And a Iustice of peace vpon his owne discretion may in either of the foresaid cales grant suertie of peace. And one Iustice of peace may vpon his owne discretion, or at the request of an other graunt the suertie of peace, against an other of his felow Iustices of peace of the same county. And one Iustice of peace may demaund suertie of peace of an other of his fellow Iustices against an other man. A man attainted of Treason, or Felony, or in a Præmunire, or abiured, or conuict of Heresie, a dumbe man, or an Enfant within the age of xiiij. yeares, may demaund & ought vpon cause to haue suertie of peace. And so may a Villeine haue suertie of peace against his Lord, least that his Lord should maihem him, & the Lord may haue suertie of peace against his villein. A dumbe man, or an Enfant aboue the age of xiiij. yeares may also be inforced to find suerties for the keping of the peace: but then themselues are not to be bound, but some others for them: Or else they must be committed to prison vntill they can finde suerties. A Iustice of peace cannot graunt suertie of peace against a Baron of the Realme, nor any other aboue the degree of a Baron: But the party who would haue the peace against him, must bring him by Subpœna into the Chauncerie, and there he must be bound to the peace. A man that is frantike shall not haue the suertie of peace of his owne demaund, because he hath not discretion to request it. But a Iustice of peace vpon his own discretion may bind an other to kep the peace against him, if he see cause thereof. Neither shal he who is an Alien borne, and no Denizen, nor in friendship with the King and the realme haue suertie of peace graunted him.

Fitz. Nat. Bre. fo. 239.

For inhomes against whom the suertie of peace is to be graunted.

I man attainted.

In Heritike.

I Dumb man.

In Enfant.

I Villeine.

I Baron.

Fitz. Subpœna 20.

I mad man.

In Alien.

27. H. 4. 4.

72 If a man do threaten an other to imprison him, the party threatned shall not haue the suerty of peace against him, that did so menace him, for that after he is imprisoned, he may haue against the other a Homine replegiando, or an action of false imprisonment, & recouer damages, & so to be recompenced for his imprisonment. But if one man do threaten an other to beate him, the party threatned may haue the suerty of peace against him: for that beating may tend to the maiheming or killing of him, which the suertie of peace might haue preuented. If a man do feare that an other will kill him, maihem him, hurt him in body, or burn his house, or procure or cause the same to be done, & wil come

Upon what cause the suertie of peace is to be graunted.

Fitz. Na. B. 79

before a Iustice of peace, & take his corporall oath to that effect, the Iust. of p. is to graunt him the suerty of peace against the man complained of: for that may satisfie the conscience of the said Iust. that the party doth complain vpon mere feare, & not vpon malice or veratio. And though the party against whom the peace is demaunded may seeme to the Iust. of peace to be a simple person, weak, feeble, impotent, or far vnable to incounter by force & strength with him that demaundeth the suertie of peace, yet he may procure or cause the other to be slaine, maihemed, beaten, or his house to burned: And further if the party that doth complain & desireth the suerty of peace, wil sweat that he doth feare, where indeed he neither doth feare, nor hath cause of feare, yet his oath doth therein discharge the conscience and oath of the Iust. of peace. And the whole fault (if any be) shal be iustly imputed to the complainor.

Suertie of peace inioyned by word or writing.

73 And whereas the words of the kings Commission be, That the said Iustices of peace shall cause al those to find suerty of peace, which do threaten any of the kings people to hurt them in bodie, or to burne their houses. It is to be obserued, that in some cases a Iust. of peace may by his owne word only cause suertie of peace to be found, and sometime he must do it by writing: As if one man do in the presence and hearing of a Iustice of peace, threaten to kill, maihem, wound, or beate an other, or to burne his house, or in his presence do offer to strike or beate an other, the Iustice of peace may commaund him by word to find suertie of peace: Or if one man will demaund of a Iust. of peace, the suertie of the peace against an other man, who is then in the presence of the said Iustice of peace, and will then and there be sworne that he is affraid of him, the Iustice of peace may by word commaund the same partie to find suertie of peace: or otherwise he may commaund the Shirife, Bailife, or some knowen officer, or his owne seruant being then present, to arrest the same partie, and to bring him before him to find suertie of peace. But if the partie against whom the peace is demaunded, or the Shirife, or Baylife be absent, and not at that time in the presence of the Iustice of peace: Then the same Iustice must make a warrant or precept in writing to the Constables, Boursholders, Tithingmen, &c. or to any other man (though he be no Officer) to arrest the same partie, and to bring him before him, or some of his fellow Iustices to find suertie of peace. In which Precept must be conteined the cause why the peace was graunted, and at whose suit, to the intent that the partie to be bound may prouide his suerties ready, and take them with him to the Iustice of peace. And the warrant ought to beare date of the place where it was made, to the intent that if an action of False imprisonment be brought against him that made the same arrest by force of that warrant, the defendant in his plea must shew the place where it was made. If suertie of peace be required of a Iustice of peace of one County (which at that time remayneth out of the Countie where he is Iustice) against a man of the Countie where he is Iustice, the same Iustice may graunt a Precept to be serued in the Countie where he is Iustice: But when the partie shall be warned to find suerties, the officer must not carrie him out of that Countie to the Iustice that made the precept, but to some other Iustice of that Countie: for a Iustice hath no authoritie but in the Countie where he is Iustice.

Suertie of peace commaunded by writing. 14.H.8.18.

A Iustice remayning out of the countie. Plow. Com. fol. 37. 13.Ed.4.8.

The seruing of proces for the peace.

Who may serue a warrant without writing, who not.

74 If a Precept be made by a Iustice of peace (either as he is a Iudge, or as he is a minister) to two men to arrest a man to find suertie of the peace, yet one of them alone may do it: If it be directed to the Shirife, he may commaund his Vndershirife, Bailife, or other sworne or knowen officer to serue it, without any precept by writing: But if he will commaund an other man that is no knowen officer to serue it, he must deliuer him a precept in writing, for otherwise he doth it not by sufficient warrant, & so a writ of False imprysonment will lie against him for the arrest. And if a Iust. of peace do direct his warrant to the Shirifes Bailife, his owne seruant, or to a stranger, to arrest one for to find suertie of the peace, the partie to whom that warrant is made must serue it himselfe, for he can commaund none other to do it, either by precept or word. A sworne & knowen officer, be he Shirife, Vndershirife, or Bailife, &c. need not to shew his warrant to a man when he commeth to serue it vpon him, for his knowen office doth authorize him. But if a Iustice of peace will direct his warrant to his seruant, or to an other stranger to serue, he must shew his warrant to the partie (if he will demaund it) or otherwise the partie may

Who may serue a warrant without shewing of it, and who not. 8.E.4.14. 20.H.7.13.

may make reſiſtance, and need not to obey it. And if the party againſt whom the ſuertie of the peace is graunted, will vpon the ſeruing of the Iuſtices precept, refuſe to come to be bound to the peace, the partie to whom the warrant is directed, may commit him to the gaole of the ſame Counties, there to remain vntill he will find ſuerties. The forme of which warrant for the peace is this, viz. Anthonius Greenway Miles, vnus Iuſticiariorum domini Regis nunc, ad pacem in Comitatu prædicto conſeruandam aſſignatus, Vicecomiti comitatus prædicti, Necnon omnibus & ſingulis Balliuis, Conſtabularijs ceteriſq; Dñi Regis miniſtris, tam infra libertates quam extra in eodem com̃ ſalutem. Quia A B. de Bechampton in comitatu prędicto Taylor venit corā me, & ſacramentum pręſtitit corporale, quod ipſe ſibi metuit damnum vel malum de vita & mutilatione membrorum per R. C. de Stoniſtratford in comitatu prędict' Butcher, vel per alium per eius procurationem fieri: Ideo vobis & cuilibet veſtrum ex parte dicti Domini Regis mando quod capiatis, ſeu vnus veſtrum capiat prędictum R. C. ita quod habeatis, ſeu vnus veſtrum habeat corpus eius corā me, vel aliquo ſociorum meorum Iuſticiariorū dicti dñi Regis ad pacem in prędict' Comit' conſeruandam aſſignat' quā cito capi poſſit ad inueniendam ſufficientem ſecuritatem, quod ipſe aliquod malum vel damnū de vita ſeu mutilatione membrorum dicto A. B. non faciet nec fieri procurabit quouiſmodo. Et ſi hoc facere recuſauerit, tunc ipſum R. C. Gaole dicti dñi Regis in comitatu prędict' duci faciat, ſeu vnus veſtrum duci faciat, ibidem moraturum, quouſque hoc gratis facere voluerit. Et qualiter hoc prędictū fuerit executum ſcire facias dictis Iuſticiarijs ad proximā generalem Seſſionem pacis in com̃ prędict' tenendam, & habeas ibi tunc hoc prędictum. Dat. apud Lecomſtead &c.

Refuſing to obey the Iuſtices warrāt.

A warrant for the peace. *Buck.*

21. H. 7. 21. Co. Lib. 5. 59.

75 If a Iuſtice of peace doe direct his warrant to a Conſtable or other officer, to arreſt one and to bring him before the ſame Iuſtice, or ſome other of his companions to find ſuerty of the peace, and he doth arreſt him accordingly, but will not bring him before ſuch a Iuſtice of peace as the partie arreſted will nominate, but before ſome other, yet notwithſtanding the party arreſted ſhall not haue an action of falſe Impriſonment, or an Action of the caſe, nor other remedy againſt the ſame Conſtable, or Officer: for it is in the diſcretion of the ſame Conſtable, or Officer, to bring the party arreſted before which Iuſtice of peace of that County that he will, ſo that he dwell within a conuenient diſtance, and not too farre from the parties owne habitation. But if a Supplicauit of the peace be directed to the Iuſtices of the peace, the Iuſtice to whom the writ is firſt deliuered ſhall only make the precept to apprehend the partie to find ſuerty of the peace, and that Precept ſhall be retornable before him only, and he only ſhall take the ſuerties, and only make the retorne without the others. And a Iuſtice of peace may if he will make a warrant to the Conſtable to bring the party before himſelfe.

To which Iuſtice of peace the partie arreſted is to be brought.

Co. li. 5. 59.

5. E. 4. 12.

76 If a Iuſtice of peace doe direct his warrant to the Conſtable or ſome other to cauſe A. B. to find ſuerties to keepe the peace, The ſame Conſtable or &c. muſt firſt require the ſame A. B. to find ſuerties to keepe the peace, and if he doe refuſe it, then he may arreſt the ſame A. B. for if A. B. will finde ſuerties, then the ſaid Conſtable may not arreſt him, becauſe the purport of the precept is performed (which is if he refuſe ſo to doe, that then he ſhall conuey him to the Gaole.) And if the Conſtable ſhal arreſt A. B. after that he hath found ſuerties according to the Precept, the ſame A. B. may haue an action of Falſe impriſonment againſt him, for that he hath arreſted & impriſoned him

A warrant to find ſuertie to kéep the peace.

without warrant, or cause. And likewise if the Constable do arrest A. B. and doe not carrie him before some Justice of peace, to finde suerties to keepe the peace, or if he resist, or refuse so to doe, then if he doe not carrie him to the gaole, A. B. may haue an action of False imprisonment against the Constable: And when the partie commeth to the Justice of peace by force of a warrant, he must offer suerties to the Justice of peace, or else he may commit him to prison: for the Justice needeth not to demaund suertie of him. 5.E.4.6. 14.H.7.5.

The partie must offer his suerties.

77 The suertie of peace is discharged by the kings death, for the band is to obserue the peace of the King, and when he is dead it is not his peace: So doth the death of the recognisor, & so doth also the death of him at whose suit it was taken, discharge the suertie of the peace, if in those cases it were not forfeited before. And in like sort when the King by his commission doth appoint Justices of peace and after dieth, or giueth ouer his crowne, the Authoritie of the same Justices doth cease: for he maketh them Iusticiarios suos, and therefore when he dieth their authority endeth. 1.H.7.1.

Suerty of the peace dieth with the king.

The Iustices authoritie dyeth with the King.

78 When a Justice of peace doth take suerties for the peace, it is not sufficient to say, that I. N. hath found sufficient suertie for the peace without naming the names of the suerties: but he must name their names and surnames. 2.H.7.4.

The suertie for the Peace must be named.

79 If a man doe finde suerties to keepe the peace, & hath day vntill a time prefired, he must appeare the same day (although he who demanded the peace doe not appeare) or otherwise, he shall forfeit his band. But it is otherwise where a suit is betweene party and party, and the defendant being taken by a Capias is bound to appeare vpon a day appointed. 39.H.6.26.

He that is bound to the peace must appeare &c.

80 When the suertie of peace is graunted against a man by a Justice of peace, he will sometime rather desire to be bound to the peace by an other Justice, then by him that graunted the same, and made the warrant: And therefore he may offer himselfe to become bound to the peace to some other Justice of peace of that County if he will, and then procure a Supersedeas from that other Justice before whom he is bound to all other Justices of that Countie to be discharged of any other arrest to be made of him, for the law doth not require that he should be seuerall times bound for one cause. And this Supersedeas is sufficient although it neither name the suertie, nor conteine the summes wherein they are bound, but yet it is a better forme to expresse them both, as the Chauncerie and Kings Bench doe. And when a man doth heare of such a precept awarded or granted against him by a Justice of peace of the Countie where he dwelleth, he may go and eyther giue suertie of the peace in the Kings Bench or els in the Chancery, and thereupon may procure a Supersedeas from the court where he is bound, to restrain the Iu. of peace of the County to take any suertie of peace of him. And then the Justices of peace of that County must forbeare to make any warrant for the peace against the partie; and if any of them haue awarded it, he must make a Supersedeas to discharge it. But a Iust. of peace of the county by a Supersedeas cannot discharge a precept that is awarded by his fellow Justice by force of a Supplicauit directed to him out of the Chancery or the Kings Bench to take the suerty of peace of one resident in that County. If any officer hauing a warrant from a Justice of peace, to arrest a man to find suerty of the peace, shall receiue a Supersedeas

A Supersedeas for the peace.

A precept awarded by force of a Supplicauit.

deas out of the Chancery, or the Kings Bench, or from any Iuſt. of the Kings Bench or from any Iuſtice of peace of that County where he is commorant, to diſcharge the ſame ſuerty of peace, wil nevertheles vrge that partie againſt whom the ſame warrant is granted to find new ſuerties for the peace, he may refuſe to giue it: And if the ſaid officer will thereupon vnder the color of his warrant commit him to priſon, the party impriſoned may haue an action of falſe impriſonment againſt him: for that the ſaid warrant is diſcharged by as great authoritie, or greater, as it was made, & the thing for the which it was made is effected, The forme of which Superſedeas graunted by a Iuſtice of peace is this, viz.

Buck.

Thomas Denton Miles, vnus Iuſticiariorum dñi Regis nunc ad pacem in Comitatu prędicto conſeruandam aſſignat', Vicecomiti comitatus prædicti, Necnon omnibus & ſingulis Balliuis, Conſtabularijs, ceteriſq; dicti domini Regis miniſtris, tam infra libertates quam extra in eodem coñ ſalutem. Quia A.B. de Poundon in comitatu prędicto Laborer venit corã me, & inuenit ſufficientem ſecuritat' qd' ipſe comparebit ad proximam generalem Seſſionem pacis in coñ prædicto tenend'. Et quod ipſe interim pacem dicti domini Regis erga ipſum dominum Regem & cunctum populum ſuum, & prędipuè erga C.D. de Twyford in coñ prędicto Huſbandman conſeruabit, ideo ex parte dicti domini regis vobis & cuilibet veſtrum mando, quod de arreſtando, impriſonando, ſeu aliqualiter moleſtando prædictum A. B. ex cauſa prędicta Superſedeatis, & quilibet veſtrum ſuperſedeat omnio. Et ſi eum ex dict' cauſa, & non alia ceperitis, ſeu impriſonaueritis, ſeu aliquis veſtrũ ceperit, ſeu impriſonauerit, tunc a priſona illa ſine dilatione deliberari faciatis, datũ apud Hilſdon &c.

¶ Superſedeas for the peace.

22.H.6.59. But if a man be arreſted in the common place for the ſuertie of peace, and he is let to baile to a certaine day, at which day he doth bring a Superſedeas out of the Chauncery, that he hath found ſuerties in the Chauncery: that is not allowable, becauſe he was by baile, which is an impriſonment in law, & therefore the ſuerty in the Chauncery will not ſerue. And it may be that the ſuerties in the Chancery be not ſufficient, and that the King and the Court was deceiued therein.

¶ Superſedeas in the Chancery for one bound in the common place.

2.H.7.1. And yet the common place hath no authority to take ſuerty of peace, but of the peace broken before them.

81 When the party againſt whom the precept is awarded to find ſuerties for the kæping of the peace, doth come before the Iuſtice of peace to be bound to the peace, then it reſteth in the diſcretion of the ſame Iuſtice of peace (if he deal in this cauſe as a Iuſtice of peace by force of the generall Commiſſion of peace, and ſo as a Iudge) to aſſigne what number of ſuerties he will accept to be bound with the party, in what ſumme of money the party and his ſuerties ſhall be bound, to allow or diſallow of the ſufficientie of thoſe ſuerties, to limit the time how long the party ſhall be bound, and to determine vpon ſome ſuch other circumſtances touching that matter. But if the ſame Iuſtice of P. be commanded as a miniſter in the execution of the writ of Supplicauit, to take the peace of any perſon, then he muſt do as the writ doth direct him, which ſometime is to take ſufficient ſuertie to be bound in a ſumme preſcribed, and ſome other time not, and then it reſteth in his owne diſcretion: The moſt vſuall maner is for a Iuſtice of peace to take two ſuerties, beſides the partie himſelfe, to be bound by Recognizance to the King, viz. Domino Regi, and that muſt alwaies be for the kæping of the peace. The forme of which Recognizance for the kæping of the peace is as followeth, viz.

¶ Recognizance for the kæping of the peace.

Buck. Memorandum qđ nono die Auguſti, Anno regni dñi noſtr Regis Iacobi dei gratia &c. 5. A. B. de Padburie in Comitatu p̃dict' Huſbandman, in propria perſona ſua venit coram me Richardo Ingolsby Milite, vno Iuſticiariorũ dicti dñi Regis ad pacem in dicto Comitat conſeruandam aſſignatorũ, & aſſumpſit pro ſeipſo ſub pœna xx.li. & D. E. & H. I. de C. in Comitat prædict Huſbandmen, adtunc & ibm̃ in proprijs perſonis ſuis ſimiliter venerunt, & manuceperũt pro prædicto A. B. viz. quilibet eorum ſeperatim ſub pœna x. li. quod idem A. B. perſonaliter comparebit coram Iuſticiarijs dicti domini Regis ad pacem ad proximam generalẽ Seſſionem pacis in Com̃ p̃dicto apud Buck. tenendam, ad faciendum & recipiendũ quod ei per Curiam tunc & ibidem iniungetur. Et quod ipſe interim pacem dicti dñi Regis cuſtodiet erga ipſum dominum Regem & cunctum populum ſuum, & prẽcipuè verſus L. M. de O. de comitatu p̃dict'. Et quod damnum vel mãlum aliquod corporale, aut grauamen prætat L. M. nec alicui de populo dicti dñi Regis, quod in lẽſionem aut perturbationem pacis ipſius Domini Regis ſeu prætati L. M. cedere valeat, quouiſmodò non faciet, nec fieri procurabit. Quam quidem ſummam xx.li. prędict' A. B. & quilibet manucaptorum prædictorum prędictas ſeperales ſummas x.li. recognouerunt ſe debere dicto domino Regi, de terris & tenementis, bonis, & catallis ſuis, & cuiuſlbet eorum ad opus dicti domini Regis fieri & leuari ad quorumcunque manus deuenerunt, ſi contigerit ipſum A. B. prẽmiſſa vel eorum aliquid in aliquo infringere, & inde legitimo modo conuinci. In cuius rei teſtimonium ego p̃dictus Richardus Ingolsby ſigillum meum appoſui. Dat apud Lethenborow die & Anno ſupradict'.

And the forme of the Recognizance for the good Abearing is this, viz.

A Recognizance for the good Abearing.

Memorandum &c. & quod ipſe A. B. interim ſe bene geret erga Dñm Reg. & cunctum populum ſuum, & p̃cipuè erga L. M. Et quod ipſe non inferet nec inferri procurabit per ſe nec per alios, damnũ aliquod ſeu grauamen p̃tat L. M. ſeu alicui de populo ipſius dñi Regis de corporibus ſuis, per inſidias, inſultus, ſeu aliquo alio modo quod in lẽſionem ſeu perturbationem pacis dicti dñi Regis cedere valeat quouiſmodo, viz. vterque prædict' D. E. & H. I. ſub pœna 50. libt, & prędict' A. B. ſub pœna 100. libt &c. **And this may be done by a ſingle Recognizance in Latin, with a Condition thereunto added in Engliſh for the keeping of the Peace, or the good Abearing, and for the day and place of the parties apparance at the Quarter Seſſions.**

A Releas of the ſuertie of peace.

§2 **A Juſtice of peace who vpon his owne diſcretion compelleth one to finde ſuertie of the peace vntill a certaine day, may vpon the like diſcretion releaſe the ſame before that day: But if a Juſtice of peace do graunt the peace at the requeſt of another, viz. at the ſuit of A. and that the Recognizance be taken to keepe the peace againſt A. then may the ſame A. only releas it, and none other, before the ſame Juſtice of peace, or any other Juſtice, that wil certifie the ſame releas before the Juſtices of peace at the next Quarter Seſſions; for that certificat being of record will diſcharge it, which a releas by deed cannot do, the ſuertie of peace being a Recognizance, and ſo of it ſelfe a record. And though the Recognizance be verſus cunctum populum, & precipuè verſus A. yet may the ſame A. releas it: for though it may ſeeme populer, and that others ſhould haue equall intereſt therein with A. yet as it appeareth by the word precipuè, it was ſpecially taken for his ſafetie. But though in ſome caſe a Juſtice of peace may releas the ſuertie of the peace, and in ſome other caſe the partie, yet the King can in neither of the ſaid caſes releas it vntill it be forfeited, for the miſchiefe that may come to A.**

thereby

thereby, though the Recognizance be taken domino Regi, for that it is not a debt vnto him vntill it be forfeited: but being forfeited, then the king, and none other may releaſe and pardon the forfeiture. And in the caſes aforeſaid, though the Juſtice of peace, or the party may releaſe the ſuerty of the peace, yet the Recognizance before taken for the ſuerty of the peace muſt not be cancelled, leſt the peace was broken before the releaſe made, and ſo the Recognizance was forfeited. And the forme of the Juſtice of peace releaſe of the peace is this: Ego præfatus Paulus Riſley armiger, vnus Iuſticiariorum domini Regis nunc ad pacem in com̃ prædict̃ conſeruandam aſſignat̃, qui S.T. de Preſton ad ſecuritatem pacis inueniendam mea diſcretione compuli, eandem ſecuritatem pacis, quantum in me eſt, in mea diſcretione decimo die Maij ann̄ quinto Reg. Iac. &c. remiſi & relaxaui. Dat̃ apud Cherwood &c. And the forme of the releaſe of the party before the ſame Juſtice that toke the Recognizance of the peace is this: Memorandum quod decimo die Iulij Anno quinto regis Iacobi &c. A.B. venit coram me Franciſco Cheyney Milite, vno Iuſticiariorum domini Regis nunc ad pacem &c. & gratis remiſit & relaxauit) quantum in ſe eſt) p̄dictam ſecuritatem pacis per ipſum verſus ſupranominatum S.T. petitam. In cuius rei teſtimon'um, ego p̄fatus F.C. &c. Datum apud Cheſſam Bois &c. And in like ſort the Juſtice or Juſtices of peace may doe, which toke ſuertie for the good abearing, if they ſee cauſe.

Buck.

The Juſtices releaſe of the peace.

The parties releaſe of the peace.

83 The peace or good abearing is broken, and the Recognizance taken for the keeping of the ſame, is forfeited by violent, extreame, malicious, and vnlawfull menacings, aſſaults, affraies, batteries, ſtrikings, or impriſonments: as if a man bound to the Peace, doe wrongfully and malitiouſly menace, aſſault, beate, or impriſon an other: or doe forcibly thruſt him into a riuer, well, or pond, whereby he is in daunger of drowning: or doe raviſh a woman againſt her will: or doe commit manſlaughter, burglarie, or robberie, or treaſon againſt the perſon of the king. And if a man be bound to the peace, and after he doth procure an other to breake the peace, this is a cauſe of forfeiture of his recognizance, taken for the ſuerty of the peace, for that the peace is broken by his meanes. And if one be bound to the peace, and after do menace I.S. to his face, and in his preſence, to kill or beate him, this is a breach of the peace. But if I.S. be abſent when he is menaced, then is it no breach of the peace, vnleſſe the ſame party doe, according to his menace, lie in weight to kill or beate I.S. for then alſo it is a breach of the peace. And though the ſuertie of the peace be not broken without fighting, beating, impriſoning, or extreamitie of menacing, yet the ſuertie of good abearing may be forfeited by the extraordinary number of people that the partie bound hath attending vpon him, or by his wearing of harneis, or other weapons more than before hee hath vſually done, or be mæte for his degree or eſtate, or by vſing of rigorous or terrible words, or threatenings tending or inciting to the breach of the peace, or indemeaning himſelfe in his behauiour, company or geſture, or doing of any thing which ſhall tend to the breach of the peace, or to put the people in dread or feare.

Cauſes of the breach of the peace, or good abearing.

Br. peace 20.

18.Ed.4.28.

22.Ed.4.35.

2.H.7.2.

10.H.7.12.

84 As the wiſedome of the Realme hath ordained Juſtices of peace to be preſeruors of the peace, and men wholy or ſpecially deuoted and aſſigned to that office. So hath ſhee made choice of other magiſtrates, who with their other offices haue the conſeruation of the peace annexed to their charges, and as a thing incident or inſeperable from their other functions, and goe continually

The Shirife, Constable &c. Conseruators of the peace.

nually linked arme in arme with them: As euerie Sherife in his Countie, euery Coroner, high Constable of any Lath, Rape, or Wapentake, Hundred, or Fraunchise, and euery petit Constable, Borsholder, Tithingman, Headborough, Borroughhead, Thirdborough, and chiefe Pledge in euerie Towne, Village and Hamlet, is within his limitts and the precincts of his authoritie a Conseruator of the peace. And so is the Steward of euery Leete, and view of francke Pledge, and the Steward of euerie Court of Piepowders a Conseruatour of the peace, and if an affray be made in their presence sitting in their Court, each of them may commit the offendors to prison. And they all are in dutie first to bend their cats and forefight to prevent the breach of the peace, next to employ both their owne valour and strength, and to commaund the helpe and force of others to pacifie those who by word or deede are in breaking of the peace: And thirdly to punish those who haue broken the peace, according to the law. And therefore any of the officers aforesaid may take, and arrest suspected persons which walke in the night, and sleepe in the day, and carrie them before a Justice of peace to finde suerties of their good behauiour. And if any be taken by watchmen in the night watch that is suspected of euill behauiour, they may take him and imprison him, vntill hee be delinered by the ordinarie course of Law. And if any doe goe or ride armed by day or night in Faires, or Markets, or other places (saving the kings seruants in his presence, or in executing of his precepts, or such as doe pursue hue and cry where offences be done) any of the same Officers may take their armour from them to the Kings vse, and commit them to the Gaole. And if any assemblies, rout, or rumour shalbe begun, the Shirifes and other the kings officers, shall take the power of the Countie and disperse them, and shall commit the offendors to prison vntill they be duely punished according to the Law. And if any doe threaten to kill, maihem, or beate an other, or doe attempt or goe about to doe it: then any of the said Officers may arrest the offendor to come before a Justice of peace, to finde suertie for the keeping of the peace, or else the same Officer may commit him to prison. And if either of the said Officers shall perceiue any other in his presence to be in breaking of the peace, either by drawing of their weapons, or by assaulting or striking one of another, or by assaulting himselfe, he may commaund them vpon paine of imprisonment to surcease, or else hee may with his weapon part and keepe them asunder, and call and procure others likewise so to do. And then he may carry them before a Justice of peace to finde suertie of the peace, which if they refuse to doe, hee may commit them to prison, or else the Constable may take suerties of them by Obligation to keepe the peace. And if any of the offendours doe flie into a house, the said Officer may breake open the dores and arrest him, and so hee may doe if the offendor doe flie into an other countie, for that the arrest is for the benefite of the common-weale. And likewise if any of the said Officers shall learne that certaine persons be fighting or quarreling in a house, in such sort that they are like to breake the peace, or that a man and a woman be in a house together committing adultery or fornication, hee may breake open the dores and arrest them to come before a Justice of the peace to find suertie of the peace, or otherwise if hee will, he may commit any of the said offendors to prison. And if any of the parties to an affray haue receiued any dangerous wound, then the Officer must arrest the offendor, and carry him to a Justice of peace, who is either to commit him to prison, or to let him to maineprise vntill the next gaole deliuery, that it be knowne whether the party wounded will liue or die thereof: or els the officer himselfe

Sta. 5. E. 3. 14

Sta. 13. Ed. 1.

Sta. 17. R. 2. 8

1. H. 7. 7.

5. H. 7. 6.

3. H. 4. 9.

13. Ed. 4. 9.

7. Ed. 3. 10. 1. H. 7 6.

22. Ass. pl. 56.

38. Ed. 3. 6 himselfe may commit him to prison vntill the same be knowen: for if the partie wounded do die, the offence will be felony. If the common voice and fame of the County be that C. D. hath committed a felony, any of those officers that doe suspect him thereof may arrest him for it. And so he may search within the limits of his authority for any persons suspected of felony, for it is a chiefe part of the Constables duetie to preserue the peace and represse felons. And if any of the officers before mentioned do arrest an offendor, or any person suspected for any of the causes aforesaid, who ought to be carried to the gaole, or before a Iustice of peace, the same officer need not carry him presently to the gaole, or before the Iustice, but he may put him in the stocks, or some other safe custody for a time, vntill he can prouide sufficient company to assist him to conduct the same offendor to the gaole or to the Iustice: Or if the partie arrested be so sicke, diseased, or wounded that he can not be presently carried without danger of death, the officer may stay him vntill he be recouered.

22. E. 4. 35.

2. Ed. 4. 9.

85 But the peace of the Realme hath beene so precious to all ages, and treasons, felonies, assaults, batteries, and other forcible violences and offences so odious, that the Lawes and Statutes of the Realme, and the wisedome of our forefathers haue made and appointed (besides the Magistrates and officers before mentioned) all sortes of able persons, in some sort, and to some purposes, preseruers of the peace: intending that as all the members of the common weale, doe taste sweete comfort, and pleasant repose by the benefit of peace, so they should be all partakers, when neede requireth of the paines to maintaine and conitnue the same peace, and to punish the transgressors thereof. And therefore by the Statute of Westminster 1. it is ordained, That all men generally shall be ready at the commaundement and sommons of the Sheriffes, and at the crie of the countrey, to pursue and arrest felons, when neede shall be, aswell within franchises as without: and they that will not, and be thereof attainted, shall make a grieuous fine to the king.

Euery able person is a Conseruator of the peace.

Sta. 3. E. 1. 9.

Sta. 3. Ed. 1. By the Statute intituled Officium Coronatoris it is enacted, That vpon all Homicides, Burglaries, men slaine, or put in great daunger, huy and crie shall be levied, and euery man shall follow the huy and crie, and the offendours steppes if it may be: and whosoeuer doth not, and is thereupon conuicted, shall be attached to appeare before the Iustices of Gaole deliuerie.

St. 5. Ed. 3. 14. By the Statute of Anno 5. Edw. 3. it is established, That if any man suspect lewd persons (then termed Robertsmen, Waskers, or Drawlatches) of any manslaughters, felonies, or robberies, be it by day or night, they shall incontinently be arrested by the Constable of the towne, and if it be within franchise deliuered to the Bailifes of the franchise, and if in guildable to the sherife, and kept vntill the comming downe of the Iustices of gaole deliuerie,

St. 17. R. 2. 8. who shal proceed to the deliuerance of them. By the statute of 17. R. 2. it is defended to all the kings people aswell Lords as others, that none shall make Assemblies, Riots, or Rumors against the peace. And if any such assemblie be begun, as soone as the Sherife and other Ministers may haue knowledge thereof, they with the strength of the country shall disturb such offendors, and put them in prison vntill the law be executed vpon them. And all Lords and other liege people of the realme shall be attending with all their strength and

Sta. 2. M. 5. 8 power to the Sheriffes and Ministers aforesaid. By the statute of An 2. H. 5. it is prouided, That the kings people being able to trauaile in the Countie where riots, assemblies, or routs against the law be, shalbe assistant to the Iustices, Commissioners, Sherife, or vndersherif of the same county, when they shall

shall be reasonably warned, to ride with the said Justices, Sherife &c. in aide to resist such Riots, Routs, and Assemblies, vpon paine of imprisonment, and to make fine and ransome to the king. By the Statute of 15. R. 2. it is ordai- Sta. 15. R. 2. a
ned, What if the Sherife, or any other of the Countie doe not attend vpon a iustice of peace, to arrest such offendors as do make forcible entries into lands or tenements, he or they so offending shall be imprisoned, and pay a fine to the king. By the Statute of Añ 1. M. it is established, That if any person being Stat. 1. M. 12
aboue the age of xviij. yeares, and vnder the age of lx. being able to serue, and not sicke, lame, or impotent, shall be required by any Justice of peace, or any Sherife of any County, where any vnlawfull assembly of xij. persons or aboue shall be to doe any vnlawfull act prohibited by that Statute, or by any Maior, Bailife, or other head Officer of any City, Borough, or towne corporat, or by any other by the commaundement of any such Justice, Sherife, Maior, &c. to go with him or them to suppresse the persons vnlawfully assembled: Then euery person, which so being able and required, doth willingly and obstinatly refuse so to do, shall suffer imprisonment for one yeare without baile or mainprise. And as in al the cases aforesaid euery able person is bound vpon request to assist the Justices, Sheriues, and other the kings officers, to pursue, apprehend, arrest, and imprison manquellors, robbers, felons, or other disturbers of the peace, and so to do his whole indeuor to be a conseruator of the peace of the realme: In like sort is euery able person bound by the common law and by the Statute of Westm̃ 1. and Westm̃ 2. to be attendant vpon the Sherife, or St. 3. E. 1. 17. St. 13. E. 1. 39
vndersherife, in the execution of the kings writs, and by that meanes to be a supporter of the iustice of the realme.

Euery person must assist to execute the kings writ.

86 Menaces, assaults, batteries, imprisonments, and maihems committed by some persons, to some persons, at some times, in some places & in some maner, forme, sort, and with some circumstances (besides the penalties aforesaid inflicted vpon the offendors therein) are also punishable in the kings high Court of the Starre-chamber as other offences hereafter mentioned be, as it doth more at large appeare in Oppressions 35.

These offences punishable in the Starre chamber.

Of

Of Riots, Routs, vnlawfull and rebellious Assemblies.

RIots, Routs, vnlawfull and Rebellious assemblies haue bin so many times pernitious, & fatall enemies to this kingdome, the peace, and tranquility thereof, and haue so often shaken the foundation, and put in hazard the very forme and state of gouernment of the same, that our lawmakers haue bene enforced to deuise from age to age one law vpon an other, and one statute after another for the repressing and punishing of them, and haue indeuored by all their wits to snib the sprouts, and quench the very first sparkes of them: as euery man may easily perceiue there was cause thereof, who will loke backe, and call to his remembrance what that small Riot begunne at Dartmouth in Kent in the raigne of king Richard the second, betweene the collector of a subsidy, and a Tyler and his wife, about the payment of one penie groat did come vnto, which being not repressed in time, did grow to so great a rebellion, that after it put in hazard the life of the king, the burning of the city of London, the ouerthrow of the whole nobility, gentlemen, and all the learned of the land, and the subuersion of this goodly Monarchy and forme of gouernement: Or if they will call to mind the small Riot, or quarrell begun in the raigne of king Henry the first betweene a Yeoman of the gard, and a seruingman of Richard Neuils, earle of Warwicke, which so far increased for want of restraint, that it was the rot of many woefull tragedies, and a meane to bring to vntimely death, first Richard Plantagenet duke of Yorke proclaimed successor to the Crowne, and the chiefe pillar of the house of Yorke, and after him king Henry the first, and prince Edward his sonne, the heires of the house of Lancaster, and to ruinate with the one, or the other of them, most of the peeres, great men, and gentlemen of the realme, besides many thousands of the common people. And therefore king Edward the first did well ordaine, That no Sherifes shall suffer Barretors or maintainers of quarrels in their Counties: And that to all parliaments, Treatises, and other assemblies, each man shall come peaceably, without any armor: and that euery man shal haue armor in his house according to his abilitie to keepe the peace. And king Edward the third prouided, that no man shall come before the Iustices, nor goe or ride armed. And that suspected, lewd, and riotous persons, shall be arrested and safely kept vntil they be deliuered

The enormitie of Riots.

West. 1. 3. E. 1. 32.
Sta. 7. Ed. 1 &
St. 13. Ed. 1. 6.

St. 2. Ed 3. 3
St. 5. Ed. 3. 14

Statutes ordained to preuent forces or Riots.

uered by the Iustices of Gaole deliuery. And that Iustices of peace shall re- Sta. 34. E. 1. 3
straine offendors, riotors, and all other Barretors, and pursue, take, and cha- Sta. 2. R. 2. 6.
sten them, according to their trespasse and offence. King Richard the second Sta. 5. R. 2. 6.
did prohibit Riots, Routs, and forcible entries into lands, that were made in St. 15. R. 2. 2.
diuers counties and parts of the Realme. And that none from thencefoorth St. 7. R. 2. 13.
should make any Riot, or Rumor. And that no man shall ride armed, nor vse 20. Rich. 2. 1
Launcegaies. And that no laborer, seruant in husbandry, or artificer, or vi- St. 12. R. 2. 6
ctualler, shall weare any buckler, sword, or dagger. And that all the kings of-
ficers shall suppresse and imprison such as make any Riots, Routs, or vnlaw- St. 17. R. 2. 8
full assemblies against the peace. King Henry the fourth enacted, That the
Iustices of peace, and the Sherife shall arrest those which commit any Riot,
Rout, or vnlawfull assembly, shall enquire of them, and record their offences. St. 13. H. 4. 7
King Henry the fift assigned commissioners to enquire of the same Iustices
and Sherifes defaults in that behalfe, and also limited what punishment of- Stat. 2. H. 5. 8
fendors attainted of Riot should sustaine. King Henry the seuenth ordained,
That such persons as were returned to enquire of riots should haue sufficient Sta. 19. H. 7.
freehold or copiehold land within the same Shire. And that no maintenaunce
should hinder their Inquisition. And in the Raigne of Quéene Mary, there Stat M. 12.
was a necessary statute established to restraine and punish vnlawfull and re-
bellious assemblies raised by a multitude of vnruly persons, to commit cer-
taine violent, forcible, and riotous acts.

2 As the said Lawes & Statutes were deuised in seuerall ages by the wise-
dome of the realme, to enquire of, and restraine Riots, Routs, vnlawfull, and
rebellious assemblies, and to checke violences, and forces, before they should
grow to a head: so haue our prouident forefathers erected the most honorable
The Court of Starrechambers authoritie to punish Riots, &c. Court of Starre-chamber, to examine and punish those, and other offences,
when they breake out to extremities, viz. to great and hainous Riots, or
such like enormities, thereby to keepe euery person in awe, and so the whole
Realme in peace. As appeareth by the Statute of Anno 3. H. 7. whereby Sta. 3. H 7. 1.
it is enacted, That the Chancellor, and Treasourer of England for the time Stat. 21. H. 8
being (and the President of the Kings Councell, and the keeper of the Kings 22.
priuie seale, or two of them) calling to them a Bishop, and a Temporall
Lord of the kings most honorable priuy Councell, and the two chiefe Iustices
of the kings Bench, and common place, for the time being (or other two Iusti-
ces in their absence) vpon bill, or information put to the said Chancellour for
the king, or any other against any person (for any misbehauing by vnlawfull
maintenances, giuing of liueries, signes and tokens, retainers by Inden-
tures, oathes, writings or otherwise, embracery of the kings subiects vntrue
demeanings of Sherifes, in making of pannels, and other vntrue returnes,
by taking of money, by iniuries, by great Riots and vnlawfull assemblies)
haue authority to call before them by writ, or by priuie seale, the said misdoers,
and they, and other, by their discretion, by whom the truth may be knowne, to
examine, and such as they find therein defective, to punish them according to
their demerits, after the forme and effect of the Statutes thereof made, in like
manner and forme, as they should or ought to be punished, if they were there-
of conuict after the due order of the Law. And though the Iustices of peace
doe assesse a fine in the Country vpon some that haue committed a Riot there,
yet the Lords in the Starre-chamber, may assesse vpon the said offendors for
the same Riot, a greater penalty, if they see cause: for in this case the offendors
be not twice punished for one offence, but part of the due punishment is insli-
cted

ted at one time, & part at another: And the Lords do sufficiently punish an offence, which was but remisly done by the Justices.

3 A Riot is where three persons or above do assemble themselues together, to the intent to beat or maihem a man, to pul downe a house, wall, pale, hedge, or ditch wrongfully, to claime or take common or a way in a ground, to destroy any parke, warren, douehouse, pond, pole, barne, mill, or stacke of corne, or to do any other vnlawfull act with force & violence, & against the peace, & they do it. If a man goe abroade with his houshold seruants which he hath cõmonly of his owne family (though they be more then his ability or degree is to maintaine) & doth make a fray by the way, this is no Riot, vnlesse the Master did before make his seruants priuy, that hee meant to make an affray: for it is no riot, except there be an intent before to do some violence and hurt. If three, foure, or more do enter into lands with force, vpon the possession of an other, though their entrie be lawfull, yet is it a Riot, for the Statute of Anñ 5. R. 2. doth prohibite entrie into Lands and Tenements with force, or a multitude of people. what is a Riot. 5.R.2.7.

4 An vnlawfull assembly is, where three persons, or above, do assemble, themselues together, to the intent to do any of the Actes aforesaid, or any other such vnlawfull act, with force and violence against the Peace, although they do it not indeede, but after their assemblie they depart by their owne consent, vpon some feare conceiued, or other cause, without doing of any outrage, for their intent of assembling was vnlawfull, though the act subsequent did not ensue according to the same. what is an vnlawfull assembly.

5 A Rout is, where three persons or above do assemble themselues, for the reuenge of their owne common quarrell. As, if the Inhabitants of a Towne do assemble together to pull downe a house, wall, pale, ditch, or other inclosure, of a parke, pasture, or close, or the head of a pole, where they wrongfully pretend to haue title of common, or a way, or to beate, or maihem one man, or more, that haue done to them all some publike offence. If they once meete, proceede, and goe forwards, towards the execution of any of the Actes aforesaid, and doe shew by Armour, Gesture, or Speech, that they meane to doe any violence, or to terrifie or feare any of the Kings people, it is a Rout, whether they put their intended purpose in execution, or not: But if a Maior and Alderman, or Bayliffe and Burgesses, or the fellowes of any societie doe assemble in their common quarrell, & make a Riot, Rout, or Vnlawfull assembly, this shall be punished in their owne priuate naturall persons, and not in the bodie politike, for it was their priuate persons that assembled to offend the Lawe, & not the bodie politicke. If a man goe to the Sessions, Market, Faire, or other assemblie of company, with his seruants in Harneke, though he hath no intent to fight, or to commit any Riot, yet this is a Rout by the manner of his comming, and is contrary to the Statute of 2. Edw. 3. which hath ordained, That no man shall bring any force in affray of the peace, nor shal go armed in faires, markets, or elsewhere, vpon paine of imprisonment, & forfeiture of his Armour. what is a Rout. 17.Ed.4.4. Rout by wearing of Armour. 2.Ed.3.3.

6 An Assembly of three persons or more, which is not to the terrour of the people, nor to do some Act with force and violence against the peace, is not vnlawfull nor prohibited by any of the Statutes before mentioned. The watch Lawfull assemblies of three persons, or more.

in London vpon Midsummer night is lawfull, and so be such like in other Cities and Townes. Assemblies be lawfull that be vsed vpon Maie day to fetch in Maie boughs, or flowres; and so be assemblies, at Church-Ales, Whitson, or Midsummer-Ales. Assemblies at the fetching home, setting vp, or daunsing about a Maie-pole, and assemblies at the bayting of a Bull, or Beare, or at the mowing or making of Dole or Reuell meade, and assemblies of Minstrells and their fellowes at certaine places, and times of the yeare, allowed by old and ancient customes, are also lawfull: And Assemblies to play at Cardes, Tables, Bowles, Clash, Bucklers, Masters, halfe Sword, Tennis, Quoits, Cailes, or such other games be likewise by the common law tollerable (though some of the same games be prohibited vpon some penalties by Statute to be vsed by some persons) and assemblies to runne at Quintall, Sand bagge, Base, Foteball, Stoleball, Handball, or such like disports, be also lawfull: For these assemblies be not made with the intent to breake or disturbe the Peace, or to offer violence, force, or hurt to the person of any; but either to trie Actiuity, or to increase societie, amitie, and neighbourly friendship. And if in any of the said assemblies, any of the parties to ỹ same, shal make a fray with a stranger, that is no Riot, neither doth it make the residue of the same company Riotors, who came thither for their disports, and not to any euill or vnlawful intent. But if any of the same company shall fall out with a stranger, or some others of their owne associates, and then some of them do take one parte, and some of them another, whereby a Riot is committed: then so many of both sides as shall take sides, and be parties to that quarrell, shall be adiudged Riotors, but not the residue; for the Riot did not take his beginning at the first meeting, when they did all assemble for any of the sportes before mentioned, but when the taking of parte with those that did quarrell began. And therefore they only, who made themselues parties to that quarrel, shall be punished as Riotors, and none other. And so it is, if a Iurie be charged to trie an Issue, if some of them fall out, and fight; this is no Riot in the residue assembling to a lawfull end. And it is lawfull for the Sheriffe, Undersheriffe, or Bayliffe to take the power of the County, what number they shal think good, to execute the Kings processe: And so may any Iustice or Iustices of Peace, & ỹ sheriffe, & the Undersheriffe, take any power of the County to represse Riots, Routs, vnlawful or Rebellious Assemblies: Or to remoue such persons, as by Inquisition are found to haue made forcible Entries into other mens possessions, or to retaine thẽ with force. And so may a Iustice of Peace, sheriffe, or constable, take of the County any number that they wil to pursue & apprehẽd Traytors, Murderers, Robbers, or other felons, or such as doe breake, or goe about to breake, or disturbe the peace: For though in the cases last specified there be three or aboue assembled together, yet it is to execute the iustice of the Lawe, and by that meanes to preserue peace. And it is a lawfull assembly which is gathered together to runne at Tilt, Iusts, or Barriers by the Kings commandement: for the cause, beginning, and end thereof doe tend to obedience, the laudable exercise of true valour, and manhood, and to the encouragement and enabling of the actors therein to defend the Realme, and the peace thereof.

An Assembly lawfully begunne doth end riotously.

34.H.8.9

21.H.6.37.
3.H.7.1.& 10
St.17.R.2.8.
St.1.M.12.2.
St.3.H.4.17.
Stat.8.H.6.9.
Stat.3.Ed.1.9.

7 And though by the before specified Statute of Anno 34. Edw. 3. it is ordained, that Iustices of Peace shall restraine offendors, Riotors, and all other Barrators, and pursue, take chasten, imprison, and punish them according

ding to their trespasses & offences, to the intent that the people bee not by such Riotors troubled or indammaged, nor the peace broken, nor any passengers by the way disturbed, or put in perill: Yet by force of that Statute the Justices of Peace could not require the helpe of the Sherife, nor commaund the power of the county to helpe to assist them, to represse the said Riotors. Where-
St. 17. R. 2. 8. upon by the before mentioned Statute of Anno 17. R. 2. it is defended, That none shall make assemblies, riot, or rout against the peace in any wise. And if any such assembly be begun, as sone as the Sherifes, and other the Kings ministers may haue knowledge therof, they with the power of the county, where such case shall happen, shall disturbe such malice with all their power, and shall apprehend al such offendors, and put them in prison, vntil due execution of the law be made of them: and all Lords and other liege people of the Realme shal attend with their whole strength and power the Sherifes & ministers aforesaid. Disturbing of riotors.

8 But because the said Statute of 17. R. 2. or any other Statute or Lawe before that time made, doth not enable the Justices of Peace, and Sherife to record that, which they shall find done in their presence against the law, nor to make inquirie thereof, nor to heare and determine the same, nor to make certificat thereof to the King and his councell, if the truth cannot be found: Nor doth assigne what Proces shall bee awarded against the offendors: nor doth inflict any penaltie vpon the Justices which shall not execute the law:
St. 13. H. 4. 7. Therefore by the before rehearsed Statute made Anno 13. H. 4. it was established, that if any riot, assemblie, or rout of people against the law be made in any part of the Realme, the Justices of peace, three, or two of them at the least, and the Sherife or Undersherife of the shire, where such riot, assembly, or rout shall be made, shall come with the power of the county, if need bee to arrest them. And the Justices, Sherife, or Undersherife, shall haue power to record that which they shall find done in their presence against the law: And the same trespassors and offendors shall bee conuict by the Record of the same Justices, Sherife, or Undersherife, in manner and forme as is contained in the Statute of forcible entries. The forme of Recording of which riot is this; viz. Memorandum quod primo die Martij anno regni regis Domini nostri Iacobi dei grat &c. tertio, Nos Franciscus Goodwin miles, et Alexander Hamden miles Iusticiarij domini Regis nunc ad pacem in comitatu prædicto conseruandam, necnon &c. assignati, & Richardus Ingolsby miles adtunc vicecomes eiusdem comitatus, ad querimoniam A. B. de Wadsdon in com prædicto yeoman in proprijs personis nostris accessimus ad domum mansionalem ipsius A. B. apud Wadsdon prædict; & ibidem inuenimus quosdam C. D. E. F. G. et alios malefactores, & pacis dicti domini Regis perturbatores ignotos, ad numerum octo personarum modo geurrino arraiatos, viz. cum gladijs, baculis, arcubus, & sagittis riotose & illegitimè aggregatos, & eandem domum sic custodient, in magnam perturbationem pacis dicti domini Regis, & populi sui terrorem, & contra formam statuti in Parliamento domini Henrici nuper Regis Angl' quarti, Anno Regni sui decimo tertio tento editi. Et ideo nos præfati F. G. & A. H. corpora p dictorū C. D. E. F. G. adtunc arrestaum', ac proxim Gaole dicti domini Regis in Com p dicto duci fecimus p recordū nostrum de transgressione p dict conuictos in præsentia nostra, ibidem moraturos, quousque finem dict domino Regi pro trāsgressione sua p dict fecerunt. In cuius rei testimonium huic recordo nostro sigill' nostra apposuimus. Dat apud Wadsdon p d die & Anno prædictis. The Justices and Sherifes shal arrest Riotors.

Buck. Recording of a riot.

Inquirie of a Riot by the Justices, &c.

9 By the same Statute of 13.H.4. it is further ordained, That if it happen such Trespassors and offendors be departed before the comming of such Justices, and Shirife, or vndershirife, the same Justices, three, or two of them shall diligently inquire within a moneth after such Riot, assembly, or Rout of people so made, and the same shall heare and determine according to the lawes of this Realme. And because the said Justices of peace, Shirife &c. are by this braunch of the Statute, to make inquiry of the Riot, which must be done by a Jury returned by the Shirife, the forme of the saide Justices precept to the Shirife to returne the said Jury is this, viz. 2.13.H.4.7.

Buck.

A precept to the Shirife to returne a Jurie to inquire of a Riot.

Henricus Longuile miles, et Willihelmus Anderous miles Iusticiarij Domini Regis nunc ad pacem in Comitatu prędicto conseruandam, necnon ad diuersas felonias, transgressiones, et alia malefacta in eodem Comitatu audiendum et terminandum assignati, vicecomiti Comit prædicti salutem. Ex parte dicti Domini Regis tibi pręcipimus firmiter iniungentes, quod non omittas propter aliquam libertatem in Balliua tua, quin eam ingrediaris, et venire facias coram nobis apud Cauluerton in Comitatu prædicto 10. die huius mensis Ianuarij 24. probos et legales homines Comitat prędicti quorum quilibet habeat terras et tenementa infra dictum Comitatum liberi tenementi p chartā ad valorem viginti solidorum, aut per Copiam Rotulorum curie ad valorem 26.s.8.d. aut de vtroque vltra omnes repriſas, ad inquirendum pro dicto dño Rege de quodam Riotto apud C. in comitatu prędicto nuper commisso, vt dicitur, et quod super quemlibet Iuratorū p̄dictorū tunc returnes in exitib⁹ xx.s. Et hoc nullatenus omittas sub pena xx.li. quam noueris te incursurum, si in executione p̄missorum tepidus seu remiss⁹ fueris. Et habeas ibi hoc p̄ceptum, Testib⁹ nobis p̄fatis H.L. et W.A. quarto die Martij Añ regni dñi nr̄i Regis Iacobi dei gratia &c. tertio. And when the Shirife hath returned his precept at a day & place, then two Justices of peace at the least (without the Shirife, who is not to sit vpon the Inquisition) are to make enquiry by the same Jury returned, the forme of which Inquisition is this. Inquisitio pro Dño Rege capta apud Wynslowe in Comitatu p̄dicto, primo die Octobris Añ Regni dicti domini nostri Regis Iacobi &c. quinto, coram Roberto Dormer milite, et Anthonio Tiringham milite, adtunc Iusticiarijs dicti Domini Regis ad pacem in Comitatu prædict conseruandam, necnon ad diuersas felonias &c. assignatis super sacramentū A. B.C.D.E.F. G.&c. Qui dicunt super sacramentū suum qđ H.I.K.L.M.N. de Addington in Comitatu prædicto husbandmen &c. simul cum alijs malefactoribus, et pacis dicti Domini Regis perturbatoribus ignotis, ad numerum decem personarum vi et armis, modo guerrino arraiati, viz. cum gladijs, Bacculis, Arcubus et Sagittis, vicesimo die Septembris, Anno quinto supradicto, inter horas septimam et vndecimam ante meridiem eiusdem dici, domum mansionalem cuiusdam S.T. de Wynslowe prędict fregerunt et intrauerunt, et in ipsum S.T. adtunc et ibidem insultum fecerunt, et ipsum verberauerunt, vulnerauerunt, et maletractauerunt, ita quod de vita eius desperabatur, in magnam perturbationem pacis dicti domini Regis, et populi sui terrorem, ac contra formam statuti de Riotis, Routis, et illicitis congregationibus, in parliamento domini Henrici nuper Regis Angliæ quarti, Anno regni sui decimo tertio, ęditi.

Buck.

The forme of an inquisition of a Riot.

Certifying a Riot.

10 By the foresaid Statute of 13.H.4. it is moreouer established, that if the truth cannot be found in maner aforesaid, then within a Moneth next after, the same Justices, three or two of them, and the said Shirife, or Vndershirife, shall certifie before the King and his Councell, of the whole fact, and the 2.13.H.4.7.

the circumstances thereof: which certificat shall be of the same force that a presentment by twelue men is: Upon which certificat, the said trespassors & offendors shal be put to answer, & they which shal be found guilty, shal be punished by the discretion of the King and his Councel. And if the same trespassors and offendors do trauerse the matter so certified, the same certificat & trauerse shal be sent into the Kings Bench, there to be tried & determined according to the order of the Law.

Trauerse of a Certificat.

Process against offendors.

8.13.H.4.7. 11 The same Statute of 13. H. 4. hath also prouided, that if the said trespassors & offendors do not come before the King, & his Councell, or into the K. Bench, at the first precept; then an other precept shall be deliuered to the Shirife of the Shire to take the said trespassors & offendors, if they may be found, & to bring them at a certaine day before the King and his Councell, or into the Kings Bench: And if they cannot be found, the Shirife or Undershirife shall make proclamation in his full County next ensuing the saide second precept, that they shall appeare before the King & his Councell, or in the Kings Bench, (or in the Chancery in the time of vacation) within three weekes then next following. And if the offendors do not appeare, as is aforesaid, & the proclamation be made, & returned, they shall be attainted & conuicted of the Riot, Assembly, and Rout aforesaid.

The forfeiture of the iustices, which do not inquire of Riots.

8.13.H.4.7. 12 By the said Statute of 13. H. 4. it was lastly enacted, that the Iustices of peace, which dwelt nearest in euery County, where such Riot of people shall be, together with the Shirife, or Undershirife of the same Countie; And also the Iustices of assise, for the time that they shal be in their Sessions (in case any such Riot, assemblie, or Rout be made in their presence) shall doe execution of this Statute, euery one vpon paine of C.li. to be paied to the King, as often as they shall be found in default of execution of the same Statute.

A commission to inquire of the Iustices, &c. default.

13 Because it was not prouided by the foresaid Statut of 13. H. 4. that the party greiued should haue any other remedy, if default should be in the saide Iustices, Shirife, or Undershirife, where such Riot, assembly, or rout should be made, nor at whose costes the same riot should be repressed, neither was it limitted what punishment the parties attainted of such Riots should suffer:

8.2.H.5.8. Wherefore by an other Statute made Añ 2. H. 5. it was established, That if default be found in the said two Iustices of peace, or Iustices of Assise and the Shirife, or Undershirife of the County where such Riot, assembly, or rout shal be made, touching the execution ý they ought to make by vertue of the said statute of 13. H. 4. & whereof the said Statute maketh mention: Then at the instance of the party grieued, the Kings commission shall be awarded vnder the great Seale, to inquire aswell of the truth of the case, and of the originall matter, for the party complaynant, as of the default or defaults of the said Iustices, Shirife, or Undershirife in this behalfe supposed to ba directed, to sufficient and indifferent persons, at the nomination, & by the aduise of the Chancellor of England. And the said Commissioners incontinently shall send into the Chauncery the Enquests and matters before them in this behalfe taken and found.

Vpon the Cõmission the coronors shal returne the Iurry.

8.2.H.5.8. 14 The Coronors of the same County for the time being, in which Countie such Riot, Assembly, or Rout shall be made, shall make the panell vpon the

said commission retornable for the time that the Shirife so supposed in default shal remain in his office: which Coroners shal return no persons, but only such which haue lands &c. to the value of x.l. by the yeare at the least. And also the same coronors shal return vpon euery of the said persons impannelled at the first day when issues be to be lost xx.s. at the least; at the second day xl.s. at the least; & at the third day C.s. at the least; at euery day after the double at the least: which issues so returned because of non-appearance of such persons impannelled, shal be forfait to the K. & leuiable to his vse. And if default be found in the said coronors touching the return of such persons, to be impannelled, or touching the returne of such issues as is aforesaide, euery of them shall pay to the Kings vse forty pounds.

What issues shalbe returned vpon the Jurors.

Where the shirife shal return the Jury and not the coronors.

15 And if the Shirife so reputed in default be discharged of his office, at the time that such commission shall go out of the Chancery, then the new Shirife of the same County, his successor mediate or immediate, and not the coronors, shall make the pannel vpon this commission returnable in manner & forme as the said Coronors should do in time when the Shirife so reputed in default stood in his office. And the same Shirife shal incurre like paine of xl.l. to the K. if any default in him be found, touching the returne of other persons by him impannelled, which haue no lands, tenemẽts or rents to the value of x l. by the yeare, or of returning such issues as the said coronors be aboue charged to returne, as the said coronors be to lose to the King in this behalfe. St.2.H.5.8.

A writ directed to enquire of a Riot.

16 The Chauncellor of England, as sone as he may haue knowledge of such Riot, assembly, or Rout, shal cause to be sent the Kings writ to the Justices of peace, & to the Shirife or vndershirife of the County, where they be so made, that they shall put the foresaid Statute of 13. H.4. in execution vpon the paine contained in the same. And though such writ come not to the said Justices, Shirife, or vndershirife, they shall not be excused of the paine (of C.li.) aforesaid, if they make not execution of the said Statute. St.2.H.5.8.

Riots shalbe inquired of at the Kings costs.

17 The Justices & other officers aforesaid shal do their offices at the Kings costs, in going, tarrying, & returning in doing their said offices, by payment thereof to be made by the Shirife of the same County for the time being, by Indentures betweene hime & the said Justices & other officers aforesaid, to be made of the payment aforesaid, whereof the said Shirife vpon his accompt in the Exchequer shall haue due allowance. St.2.H.5.8.

The punishment of Riotors.

18 Such Riotors attainted of great & haynous Riots, shal haue one whole yeares imprisonmẽt at the least without being let out of prison, by baile, mainprise, or any other manner during the yeare aforesaid: & the Riotors attainted of petit Riots shal haue imprisonment as the K. & his Councel shal think good. St.2.H.5.8.

Each man shall helpe to repelle Riots.

19 The Kings liege people being able to trauaile in the Countie where such Riots, assemblies, or routs shal be made, shalbe assistant to the Justices, commissioners, Shirife or vndershirife of the same County, when they shalbe reasonably required, to ride with the said Justices, Shirife, or vndershirife, in aide to resist such Riots, Routs, & assemblies, vpon paine of imprisonment, & to make fine & ransom to the King. St.2.H.5.8.

Baylifes of Franchises

20 The Baylifes of franchises shal impannell sufficient people as before, vpon St.2.H.5.8.

vpon paine to lose xl.l. to the King, in case that such sufficient persons may be found within the said franchises. And like ordinances & paines shal hold place & take effect in Cities, Boroughs, & other places & townes enfranchised, which haue Justices of peace within them. Corporat towns hauing Justices.

21 Forasmuch as in the before rehearsed Statute of 13. H. 4. it is not expressed of what sufficiency the Jurors impanneled by the Shirife to inquire of Riots should be, Nor what issues they should lose, if they appeare not, Nor any mention is made of any punishment the mainteinors and embracors of the Jurors that so shal be impannelled, should haue for their misdemeanor, if any should be: Therefore by a Statut made Añ 19. H. 7. it was enacted, that if any Riot, Rout, or vnlawfull assembly be committed within this realme, the Shirife hauing a precept directed to him shal return xxiiij. persons dwelling within the Shire where such Riot, &c. shall be so committed whereof euery of them shal haue lands & Tenements within the same shire to the yearely value of xx. s. of Charter land or freehold, or xxvj. s. viij. d. of copihold, or of both, aboue all charges, for to enquire of the said Riot, Rout, or vnlawfull assembly. And he shall returne vpon euery person so by him impanelled in issues at the first day xx. s. at the second xl. s. (if that they appeare not & be sworne to enquire of the premisses at the first day.) And if default be found in the Shirife, or vndershirife, for returning of other persons, being not of the same sufficiency, or for not returning issues in forme aforesaid, then the said Shirife shal forfeit to the King for either twenty pounds. St. 19. H. 7. 13 A Jury to enquire of Riots

22 If the said Riot, Rout, or vnlawful assembly be not found by the saids Jury, by reason of any maintenance or embracery of the Jurors, then the same Justices, & the shirife, or vndershirife (beside such certificat that they be bound to make according to the foresaid Statute of 13. H. 4.) shall in the same certificat certifie the names of the mainteinors & embracors in that behalfe, if any be, with their misdemeanors that they know, vpon paine of euery one of the said Justices & Shirife or vndershirife to forfait xx. l. if they haue no reasonable excuse for not certifying of the same: which certificat so made shall be of like force & effect in the law, as if the matter contained in the same were duly found by the verdict of xij. men. And euery person duly proued to be a mainteinor or embracor of the same, shall forfeit to the K. xx. l. & shal be committed to ward, there to remaine by the discretion of the Justices. St. 19. H. 7. 13 Maintenance where by a Riot is not found.

23 One Justice of peace alone can neither make inquiry of a Riot, Rout, or vnlawfull assembly, when it is done, nor assesse a fine, nor award any proces for it, nor otherwise meddle with it in the nature of a Riot, or Rout, but only as a trespas against the peace, or vpon the statute of Northampton, or the Statut of 34. E. 3. or vpon the Stat. of forcible entries; for the wordes of the foresaid Statute of 13. H. 4. be: That if such trespassors or offendors be departed before the comming of the said Justices, Shirife, or &c. the same Justices, three or two of them shall diligently enquire &c. So that there must be two of them at the least to make such inquirie. But if one Justice of peace do heare of any Riot, Rout, or vnlawfull assembly, he alone with his seruants may goe to the place, where the assembly is reported to be made, and if he finde any riotously gathered together, he may arest them to finde suerties of their good behauiour according to the Statute of 34. E. 3. & he may take their weapons from them, and retaine them vntill their hot blood be cooled. And if they 7. Ed. 4. 18. 14. H. 7. 9. Kel. fol. 41. what one Justice of peace may do alone in a Riot.

they refuse to finde sueries of their good behauior, he may commit them to prison. But this must be done presently vpon the act doing, for if there be any meane time, he hath then no authority to commit them to prison. And if he come to the place, whither he doth vnderstand, that some persons will repaire to commit some Riot, Rout, or violent act against the peace, & the same persons be not yet come thither, he may leaue his seruants there, to restraine them from committing their intended Riots, or other offences, or else to arrest them to finde sueries of their good behauior, if they do offer to commit any Riot, or to breake the peace. And so may he also do, if he shall be sicke and heare of any Riot &c. intended to be done; he may send his seruants to represse it, or to bring the offendors before him, or some other iustice of peace, to find sueries to keepe the peace, or else to commit them to the Gaole. So that one Iustice of peace alone may by the warrant of the said Statut of 34. Ed. 3. do much in prenention of a Riot &c. before it be done, & for the staying of it, whilest it is in doing, but nothing to punish it as a Riot, when it is done: for that statute of 34. Ed. 3. was made for the common profit of the Realm, spedily to interrupt, and prevent present mischieles, & to disperse malefactors, Barretors, & other Riotors in their very first meeting and encounter, and so farre as may be to parte and cut off the quarrell, before it grow to any head or extremity, which peraduenture would not be easily pacified, if one Iustice should do nothing, vntill some other of his fellowes came to assist him therein. And a Iustice of peace may by word only, without warrant in writing, command his own seruants, or any of them, to apprehend those that are about to commit a Riot in his presence: And they may iustifie the taking of them, though those Riotors be gone or fled away out of the presence of the same iustice, before his said seruants can lay hold on them.

24 Although this Statute of 13. H. 4. doth not make that mention which the Stat of 8. H. 6. of Forcible Entries doth, touching complaint to be made to the Iustices of peace, of a Riot, Rout, or vnlawful assembly, but doth binde the nert Iustices of peace to do execution of this Statute, euery one vpon pain of C. l. yet the Sages of the Realme, & the wisedom of the interpreters of the law, haue thought it reason, that notice should be giuen vnto the said nert Iustices thereof, before they should incurre the said penalty of C. li. vnles it be some great, notorious, & very perilous Riot, which by common intendment, euery person in those parts may take knowledge of; for as the said Statute of 13. H. 4. doth relate to the Statute of 8. H. 6. touching the conuiction of offendors by the record of the Iustices: So it is like, that the meaning of the makers therof was, it should do, in giuing notice, or making of complaint of the wrong receiued. 4. El. Dy. 210

The Iustices must haue notice of the Riot.

25 If the Iustices doe assemble themselues, the Shirife, and the Iurie to make inquirie of a Riot within a moneth, according to the Statute, and after at the parties request, they do not require of it, but doe dismisse the Iury, for that the parties haue agreed betweene themselues; Yet the Iustices shall pay a fine to the King, although none doe giue euidence for the King vpon that Riot: for they ought to take and charge an enquest, and to make enquiry of that Riot, whereof they were enformed, or of all Riots, seeing, it may bee, that the Iurors themselues haue knowledge of the Riot. And moreouer they must make proclamation, if any will enforme the Kings Iustices of any Riots, Routs &c. And the said Statute of 13. H. 4. which giueth authoritie to the Iustices

The parties agreement, no discharge of the inquisition.

Iustices and Sherife &c. to require of the Riot, and to heare and determine it, according to the law, was ordained to punish Riotors for breaking of the K. peace, and thereby to make them an example to others, and also to intitle the King to a fine. And therefore the law will not permit, that the satisfaction of the parties grieued should depriue the King of his fine, or ease the offendors of their due and deserued punishment, and also yeld incouragement to others, vpon hope of agreement, to put in practise the like Riots or other outrages.

St. 13. H. 4. 7. 26 And whereas the said Statute of 13. H. 4. hath ordayned, that if any Riot or &c. against the law shall be made, the Iustices of peace, the Shirife or vndershirife shall come with the power of the County, if need be, to arrest them: That power of the County is expressed before by the Statute of 17. R. 2. viz. All Lords and other liege people of the Realme, as Knights, Esquiers, gentlemen, yeomen, labourers, seruants, apprentises, villaines, and al others of the age of 15. yeares or aboue (which be not of the Clergie, decrepite, or women) whereof the said Iustices and Shirife may take so many to assist them as they shall thinke good to arrest the offendors, and to cary them to the Gaole, And if the Iustices of peace be informed of a Riot committed at such a place, and they go with the power of the County to suppresse it, and finde no Riot there, yet they are not to be blamed or fined for the leuying of the power of the County.

What power of the County the Iustices shall vse to represse Riots.

St. 13. H. 4. 7. 27 By the sayde Statute of 13. H. 4. the Iustices of peace, Shirife or vndershirife, haue power to record that which they shall finde done in their presence against the Law, and the trespassors and offendors shal be conuict by the Record of the said Iustices; which recording must either be grounded vpon a thing done in their owne presence, or else by inquirie vpon the oath of other men: And therefore if two Iustices of peace assisted with the Shirife or vnder Shirife, doe see a Riot, they may commaund the Riotors to be arrested, & then record the Riot, without other inquirie. But it is otherwise, if they do not see it, for then they must first inquire of it by a Iury, and after the same being found by inquisition, they must make a record thereof, which record that the said Iustices doe make, must be in writing, and is to remane with one of them. And they and none other of the Iustices ought to commit the Riotors to prison, and to assesse their fines, and to cause the same to be estreated into the Exchequer. And if the Iustices do record a Riot of their owne sight, the parties charged therewith shall neuer be allowed to trauerse it, though indeed there was neuer any such Riot: for their sight of the Riot being Iudges of record, maketh that record in the iudgement of the law, as strong and effectuall, as if the supposed offendors had confessed the Riot before them; and (touching the restraining of trauerse) more effectuall, then if the Riot had bin found by a Iury vpon the euidence of others. And if the Iustices of peace do see the Riot committed, they may record the riot, though the Riotors doe escape, for that the fact is done in their presence, which is the ground of their record. And if the same Riotors doe escape from the Iustices at that time, they cannot apprehend them at an other time; for the apprehension and punishment of them must be whilest the Riot is committing, or presently after, and as it were, whilest, the blod is hot. Neither in that case, if the Riotors do escape, the Iustices can make any proces vpon their record; neither ought it to be kept amongst the records of the peace, but must be sent into the Kings, Bench

The Iustices record of a Riot.

No trauerse to the record of a riot made of the Iustices own sight.

Bench, that proces may there be made vpon it: And in this case the offendors are not to be admitted to their trauerse, but are of necessity to make fine for it. 36.H.6.25.

If two Iustices of peace or more, and the Sherife or vndershirife, doe meet at a place appointed about the Kings seruice, the affaires of the country, or their owne priuate busines, & any others to the number of three or aboue will make an assault in Riotous manner vpon them, or any of them, or vpon any other in their presence, they may arrest the offendors, commit them to prison, & record the Riot, aswell as if they had come of purpose to see and arrest Riotors; but if they which do begin a Riot do flie into an other County before they do commit the Riot, then the Iustices must not meddle with them. And this recording of a Riot by the Iustices of peace, the Sherife, or vndershirife is of that credit in the iudgement of the Law; That if a man be bound by Recognizance to keepe the peace, and after such a record of being party to the committing of a Riot is entred against him, in a Scire facias awarded against him, vpon the Recognizance, he shall not be allowed either to iustifie the fact, nor plead not guiltie thereunto.

The credit of the Iustices record of a Riot.

28 Whereas the said Stat of 13.H.4. hath ordeined, that if the truth cannot be found, then within a Moneth next after, the same Iustices, three or two of them shall certifie, before the King and his Councell, the whole fact, and the circumstances thereof, which words (viz. the same) haue relation to the Iustices of the Shire; So that if two Iustices of the Shire, & the Shirife, or &c. go to see the Riot, any other two Iustices may make inquirie of it, & then they together, or the first two, or the last two may make certificat thereof, within a moneth after that inquisition taken. But if the inquiry be made within a moneth after the Riot, or &c. committed, & the certificat not made within a moneth after that, then is not the certificat good, nor according to the said Statut; And yet if the Iustices doe make an inquirie within a moneth after the Riot committed, and then do giue day to the Iury to deliuer their verdict after the moneth expired, that is a good inquisition & according to the Statut; for by that day giuen the Iury may enquire further, & receiue more euidence to informe them of the truth of the matter. If an enquest do find that a Riot was committed by x. persons & the Iustices do certifie, that it was commited by xx. persons, then the certificat, & not the inquisition shall be taken, for by that certificat of the Iustices it appeareth, that the truth was not found by the inquisition. And so it is, if the inquisition be of x. persons, & the certificat be of x. persons in harneis. And likewise if the inditement be of a riotous assault only, & the certificat bee of a riotous assault, battery, & maiheming: for though in the cases aforesaide the enquest haue found a truth, yet they haue not found the whole truth, neither that which is most for the Kings aduantage, nor fully performed the meaning of the said statute: but if the indictment and the Iustices certificat do vary in the day of the committing of the riot, then the indictment shall be preferred before the certificat; for the day doth alter nothing to qualifie or aggrauat the offence. And yet seeing the said certificat is but only in the nature of a declaration, to cause the parties accused to make answer thereunto, the same certificat ought to comprehend the certaine yeare, & day, though not the addition of the parties, being not within the words of the stat of Additions made Añ 1.H.5.5. St.13.H.4.7.

Certificat of a Riot.

St.13.H.4.7.

29 And though the said Statute of 13.H.4. doth only make mention of a Capias, yet it seemeth by the words of the same, that first there ought to be awarded

The proces against riotors.

warded a Venire fac' against the offendors, & if they do not appeare, then a Capias: for the words of the Statute be, if they do not come before the King and his councel, or into the Kings Bench at the first precept, then another precept shal be deliuered to the Sherife to take the said offendors &c. And this proces must be returned before the Kings councel, or in the Kings Bench: but if there be awarded against the offendors, a Subpena, or prinie seale, it shall be void.

St. 13. H. 4. 7 30 Notwithstanding the said Stat of 13. H. 4. hath inflicted a penalty of C. l. vpon the next Iustices of the county where such riot shalbe committed, if the execution of that Statute be not done: yet if other Iustices of the same county do performe that office, then the nert Iustices shall be excused, & the same penalty shall be saued: for the Stat doth wholy or chiefly respect, that the offendors shalbe arrested or disturbed, their offences inquired of, recorded, and punished, & by that meanes the peace preserued: for all the Iustices of peace within the commission, how farre off soeuer they dwel (so that they dwel within the said county) if they haue notice of such a riot, rout, or vnlawful assembly, ought to inquire of it, to record it, & to suppresse it, or otherwise they may be fined by the Lords in the Star-chamber, though the penaltie of C. l. shalbe inflicted only vpon the two nert Iustices, for that they are intended most likely & sonest to haue knowledge of it. But if the Sherife or vndersherife should not come to the Iustices, being sent for to assist the same Iustices, & to further the repressing of that riot, and the performance of that seruice, then all the said Iustices dwelling nere or remote shalbe excused of the same penalty of C. l, or any other, for the said statute doth giue him equall authority, & as it were ioyne him in commission in the copulatine with them.

The penaltie of C. l. for not executing this Statute.

St. 13. H. 4. 7. 31 It appeareth by ỳ said stat of 13. H. 4. that if the offendors & trespassors do trauerse the matter certified by the Iustices of peace, to the K. & his councel, the same certificat and trauerse shall be sent into the Kings Bench, and there be tried & determined according to the law. And in like sort if the trespassors & offendors do trauerse the matter found by Inquisition before the Iu. of peace in the county, the same Inquisition shalbe sent to the Iustices of peace at the nert Quarter Sessions of the same county, city, borough, or towne corporat, hauing Iustices of Peace within themselues, & there the trauerse shalbe tried and determined according to the Law: the forme of which trauerse taken in a towne corporat is this; Alias, scilicet ad Sessionem pacis tentam apud Buckingham in commitatu p̃dicto die Lune proximo post festum Sancte Trinitat, Anno regni d̃ni n̄ri Regis Iacobi dei grat Angliæ &c. secundo, coram Iohanne Nichols generoso Ballino Burgi & parochiæ de Buckingham prædicta, & Francisco Forteſcue milite, Thoma Denton milite, Richardo Ingolsbie milite, Willihelmo Androwes milite, Roberto Iohnson milite, Paulo Rilley armigero, & Simone Lambard generoso, & alijs socijs suis Iusticiarijs dicti domini Regis ad pacem in dicto Burgo & parochia conseruandam, necnon ad diuersas felonias, transgressiones, & alia malefacta in eisdem Burgo & parochia perpetrata, audienda, & terminanda, assignatis, per sacram̃ duodecim Iuratorum extitit presentatum, Quod A. B. C. D. E. F. de Galcot, cum diuersis alijs malefactorib⁹, & pacis dicti Domini Regis perturbatoribus modo guerrino arraiati, vniti, & assemblati, vicesimo die Maij, hora quarta post meridiem eiusdem diei, Anno eiusdem domini Regis nunc secundo, vi & armis, viz. baculis, gladijs, pugionibus, falcastris, & alijs armis tam inuasiuis, quam defensiuis apud Prebend-end in Buckingham prædicta clausum cuiusdam L. M. vocatum Bonehill

Trauerse to an Inditement of Riot.

A trauerse to an Inditemẽt of riot.

hill close, illicitè, riotosè, & routosè fregerunt & intrauerũt, et decem carractatas feni ad valenc' quatuor librar de bonis & catallis dicti L. M. adtunc & ibid iniuste & illicite ceperunt, & asportauerunt, contra pacem dicti domini Regis, & contra formã statuti inde editi & prouisi. Per qd præceptum fuit Iohanni Crooke subballiuo, qd non omitteret propter aliquam libertat &c. quin venire faceret eosdem A.B.C.D.E.F. ad respondẽdum &c. Posteaque scilicet die Lune proxim post festum sancti Michaelis Archang' anno regni dom Regis nri Iacobi secũdo corã pfat Iusticiarijs venerunt pdicti A.B.C.D.E.F. in proprijs personis suis, & habito auditu Indictamenti pdicti, seperatim dicunt, qd ipsi non sunt inde culpabiles. Et de hoc ponunt se super patriã: Et H.I. qui pro domino Rege in hac parte sequitur similiter. Ideo veniunt inde Iurat corã Iusticiarijs dicti dni Regis ad pacem in Burgo & parochia pd conseruandam assignatis &c. ad Sessionẽ pacis apud Buck. pd die Lune proxim post Epiphaniam dni tunc proxim futuro tenend. Et qui &c. Ad recogn &c. Quia tam &c. Idem dies datus est tam pfat H.I. qui sequitur pro Dño Rege, quã pfat A.B.C.D.E.F. Ad quas quidẽ Sessiones pacis tentas apud Buck. pd in com pd dict die Lune proxim post festum Epiphaniæ dni, Anno regni dicti Regis dni nri Iacobi tertio, corã dicto Balliuo & dict' F.F.T.D.R.I. & socijs suis Iusticiarijs dicti Dni Regis ad pacẽ in dict' Burgo & parochia conseruand, necnon ad diuersas felonias, transgressiones, & alia maletact' in eodem Burgo & parochia perpetrata, audiend, & terminand assignatis, venerunt tam pfat H.I. qui pro dño Rege in hac parte sequitur, quã pfat A.B.C.D.E.F. in proprijs personis suis: Et Iuratores p subballiuum Burgi & parochie pd ad hoc impanellat & exacti, viz. E.F. Mercer. O.P. Draper, &c. similiter venerunt, qui ad veritat de pmissis dicendam triati & iurati dicunt super sacm suum, qd pd A.B.C.D.E.F. culpabiles sunt, & eorũ quilibet culpabilis est de transgressione, contemptu, & riotto pd in Indictamento pd superius specificatis, modo & forma prout superius versus eos supponitur. Ideo cõcessũ est p cur, q pd A.B.C.D.E.F. capiantur ad satisfaciend dicto domino Regi de finibus suis occasione transgressionis, contemptus, & riotti pdict'. Qui quidem A.B.C.D.E.F. adtũc & ibid psentes in cur petierũt se ad finẽ cũ dict' dño Rege occasione pd admitti. Et inde pon se seperat in misericordia dni Regis. Et assessat finis eiusd A.B. p Iusticiar pd ad 5. li. Et assessatur finis eiusd C.D. ad 3. li. &c. bone & legalis monet Angliæ ad opus & vsum dict dni Regis.

32 Though the laws & statuts before rehearsed, or mẽtioned did take sufficiẽt order for the inquiring of, repressing, & punishing of such as did commit riots, routs, or vnlawful assemblies, by xij. iij. v. or some small number of persons, & then were apprehended, or dispersed by the Iustices of Peace, the sheriffe, or vndersheriffe, with the helpe of the countrie, when need required: Yet there was no sufficient law deuised to suppresse, & punish such as did assemble in great numbers, routs, & tumults, & would in contempt of the law, and in rebellious manner, put in practise, vnlawfull, forcible, and violent acts, and being by authority of the same law, in calme manner required to the contrary, would yet stand at the staues end with the peace of the realme, and the iustice of the law, and as it were in despite of all gouernment and gouernors proceed in their furie: Therfore to continue peace and tranquility in the common weale, and by a more sharpe correction to bridle or punish so great maladies, by a statute made Anno 1. M. it was enacted, That if any persons to the number of xij. or aboue, being assembled together, shal intend, goe about, practise, or put in vre by force of armes, vnlawfully, and of their owne authority, to

Twelue or aboue assembled to change lawes. St. 1. M. 12.

to alter or change any lawes made or established for religion by authoritie of Parliament, which stand in force, or any other Lawes or Statutes of this Realme, or any of them, the same number being commaunded or required by the Sherife of the shire, or by any Justice of peace of the same shire, or by the Maior, Sherife, Justice of peace, or by the bailifes of any citie, borough, or towne corporat, where such assemblies shall be vnlawfully had and made, by proclamation in the Quenes name, to retire, and repaire to their owne houses and habitations, or places from whence they came: and they, or anie of them, notwithstanding such Proclamation, shall remaine, and make their abode and continue together by the space of one whole houre after such commaundement or request made by Proclamation, or after that shall willingly in forcible and riotous manner attempt to doe or put in vre any thing aboue specified: Then as well euery such abode or continuing together, as euerie such act or offence, that after such commaundement or request by Proclamation had or made, shall be attempted to be done, practised, or put in vre by any of the persons being of the number aforesaid, shall be iudged felonie in all and singular those persons, that so shall make their abode or continue together, or shall attempt or commit any act. And the offendors therein shall be adiudged felons, and shall suffer onely execution of death, as in case of felony.

Practising to destroy parks, ponds, &c.

Common or way.

Destruction of dere, conies, doue-houses, fish. Pulling downe houses, burning stackes of corne, abating of rents.

Stat. 1. M. 12. 33 If any persons to the said number of twelue, or aboue, shall intend, goe about, practise, and put in vre, in manner and forme aforesaid, to ouerthrow, cut, breake, cast downe, or digge vp the pales, hedges, ditches, or other inclosure of any Parks or Park, or other grounds or ground inclosed, or the banks of any fish-pond or poole, or any conduits for water, conduit heads, or conduit pipes, hauing course of water, to the intent, that the same or any of them from thencefoorth should remaine open, not inclosed, or voyd, or vnlawfully to haue common or way in the same Parkes or Parke, or other grounds or ground inclosed, or in any of them, or to destroy in manner and forme aforesaid the Dere in any Parkes or Parke, or any warrens or warren of Conies, or any Doue-houses, or any fish in any fish-pond or poole, or to pull or cut downe any houses, barnes, milles, or bayes, or to burne any stackes of corne or graine, or to abate or diminish the rents or yerely value of any manors, lands, or tenements, or the price of any victuall, corne, or graine, or anie other thing vsuall for the sustenance of men, and being required or commaunded by any Justice of peace, or by the sherife of the county, or by the maior, bailife, or bailifs, or other head Officers of any citie or towne corporat, where such assemblie shalbe had by proclamation to be made in the Quenes name, to retire, and returne in peaceable maner to their places and houses from whence they came, and they or any of them (notwithstanding such proclamation) shal remaine or make their abode, or continue together by the space of one whole houre after such commaundement or request made by proclamation: or after that shall in forcible maner do, or put in vre any of those things last before mentioned: then as well euery such abode, or continuing together, as euery such act, that after such commandement or request by proclamation, or request had or made, shall be done, practised, or put in vre, by any of the persons being aboue the number of twelue, shalbe adiudged felonie, and the offendors therein shall be adiudged felons, and shall suffer onely the execution of death, as in case of felonie.

1. M. 12. 34 If any person or persons vnlawfully, and without authority, by ring-

Raising of vnlawfull assemblies by some acts or words.

ing of any bell, or bells, sounding any trumpet, drumme, horne, or other instrument whatsoeuer, or by fiering of any beacon, or by malitious speaking or vttering of any words, or making of any outcrie, or by setting vp, or casting of any bils or bill, or writing whatsoeuer, or by any other deed or act, shall raise or cause to be raised or assembled any persons to the number of twelue or aboue, to the intent, that the same persons should doe, or put in vre, any of the things aboue mentioned, and that the persons to the number of twelue or aboue so raised and assembled after request or commaundement had or given in forme aforesaid, shall make their abode, or continue together, as is aforesaid, or vnlawfully and in forcible manner perpetrate, doe, commit, or put in vre any the acts or things abousaid: Then all and singular persons, by whose speaking, deed, act, or any other the meanes aboue specified, any persons to the number of twelue or aboue shal be raised or assembled, for the doing, committing, or putting in vre of any the acts or things aboue mentioned, shall be adiudged for his so speaking or doing a felon, and shall suffer execution of death, as in case of felony.

Retayning them which be assembled.

35 If any wife, or seruant of any of the same persons, or any other person whatsoeuer, shall willingly and without compulsion, bring, send, deliuer, or conuey, any money, harneste, artillerie, weapon, meat, bread, drinke, or other victuall to any person or persons so being assembled as is aforesaid, during such time as he or they shal so be assembled, or be together, as is aforesaid: then euery wife, seruant, or other person, so bringing or conueying &c. any of the foresaid things to the same persons so being assembled togither in forcible maner, or to any of them, and not departing to their houses or dwelling places, vpon request or commaundement made vnto them as is aforesaid, shall be adiudged a felon, and shall suffer execution of death, as in case of felonie. 1.M.12.

Vnlawfull assemblies aboue two and vnder twelue.

36 If any persons aboue the number of two, and vnder the number of xij. being assembled together, shall intend, goe about, practise, or put in vre with force of armes vnlawfully, and of their owne authority, to murder, kil, or slay any of the kings subiects, or to ouerthrow, cut, breake, or cast downe, or dig vp the pales, hedges, ditches, wall, or other closure of any parks or parke, or other ground inclosed, or the banks of any fish-pond or poole, to the intent that the same or any of them from thencefoorth should remaine open, not inclosed, or void, or to haue common or way in the same parks or parke, or other grounds or ground inclosed, or in any of them, or to destroy any parkes or parke, or fish-pond, or poole, or any warrens or warren of conies, or any doue-houses, or to pull, or cut down any house, barne, or mill, or to burne any stack of corne or graine, or to alter, defaulke, or abate the rents, or yerely value of any manors, lands, or tenements of any of the kings subiects, or the price of any victuall, corne, or graine, or any other thing vsuall for the sustenance or apparell of men, and being required or commanded by any Iustice of peace, or the shirife of the county, or by any maior, bailife, or bailifes, or other head officer of any citie or towne corporat, where such assembly shall be had, by Proclamation to be made in the kings name, to retire or returne to their habitations, places, or houses: and they so required by such proclamation shal not so do, but after that shall in forcible manner in forme aforesaid, attempt to do or put in vre any of the things last aboue mentioned: then euery of the same persons being aboue the number of two, and vnder the number of twelue, shal suffer imprisonment of his or their bodies by the space of one whole yeare, without baile 1.M.12.

or

or mainprise. And also if any person or persons shall be damnified or hurt by the doing, committing, or putting in vse of any vnlawfull act or thing aboue mentioned, then all and singular persons so damnified and hurt shall recouer and haue dammages with the costs of their suit sustained in that behalfe trebled against the offendors therein. The remedy of the partie grieued.

1.M.12. 37 If any persons aboue the number of two shall vnlawfully and of their owne authority assemble together, to the intent with force and armes to doe, practise, or put in vre any of the things aboue mentioned: then it shal be lawfull to euery Iustice of the peace, and to euery Sherife in any county, being within the kings dominions, and to euery maior, bailife, and other head officer of any citie, or towne corporat, for the time he shall be in office, or any other person or persons hauing the kings Commission, or Letters from his highnesse, as well to raise and assemble the kings louing subiects in manner of warre to be arraied in such great number, as he or they then shall think meet or able, to the intent by violence of strength to suppresse, apprehend, and take the said persons that shall be so vnlawfully assembled. And if the said persons so vnlawfully assembled, after such commaundement or requeſt by proclamation made, shall continue together, and not endeuour themselues to returne towards their habitations, houses, or places from whence they came, in as short time as they may conueniently: then it shall be lawfull to euery Iustice of peace, sherife, and also euery maior, bailife, and other head officer of any city or towne corporat, and to euery other person hauing authority as is aforesaid, after such commandement or requeſt by proclamation made, and to such persons as shall be assembled with any Iustice of peace, or sherife, or with any maior, bailife, or other head officer of any city or towne corporat, and with euery other person hauing authority as is aforesaid, to suppresse, apprehend, and take those persons so vnlawfully assembled, which after such proclamation made, shall continue together, and not endeuor themselues to returne towards their habitations &c. And if the said persons so vnlawfully assembled together, or any of them shall fortune to be killed, slaine, maihemed, or hurt, in, or about the suppressing or taking of them, then euery such Iustice, Sherife, Maior, &c. and euery other person hauing authoritie as is aforesaid, and all and singular persons by him or them assembled shall be free, discharged, and vnpunishable: as well against the king, as against all and euery other person and persons, of, for, or concerning the killing, maihemming, or hurting of anie person or persons so vnlawfully assembled, that shall be killed, slaine, maihemed, or hurt about, or by occasion of taking or suppressing of them &c. Raising of power to suppresse vnlawfull assemblies

1.M.12. 38 All and euery Copieholder and Customary holder, being a yeoman, artificer, husbandman or labourer, and being of the age of xviij. yeares, or more, and vnder the age of lx. yeares, not sicke, impotent, lame, maihemed, neither hauing any other iust or reasonable excuse or cause to the contrary, and being required by the Sherife, Iustice, or Iustices of peace, or other hauing authoritie by this act, or by commission, or letters, &c. they declaring their said authoritie, or being required by the immediat Lord or Lords of whom such copy or customary holds then shalbe holden, to serue the king, for any the causes aboue rehearsed, and refuse so to do, shall (only during the life of such person or persons so refusing) forfeit to his Lord or Lords, of whom such copy or customary holds then shall be immediatly holden, and should be holden during the life of such person or persons so refusing, in case he had not refused, all their Copieholder being required refuseth to serue.

copie and customarie holds: And it shall be lawfull to euerie such Lord &c. his heires or assignes of whom such copy and customary holds shalbe immediatly holden, and should haue béene holden, in case that such person or persons had not so refused, to enter and take into his or their hands or possessions all such copy and customarie holds so holden of them, or any of them immediatly, and to retaine the same during onely the life of such offendor or offendors, in such manner as he or they should haue had the rents or seruices of such copie or customary hold, in case such person or persons so refusing, had not refused.

A farmer required refuseth to serue.

39 All and euery farmer being a yeoman, husbandman, artificer, or labourer, and being of the age of xviij. yéeres, or more, and vnder the age of lx. yéers, not sicke, impotent, lame, maihemed, nor hauing any other reasonable excuse or cause to the contrary, and being required by the sheriffe, Justice, or Justices of peace, or other hauing authority by this act, or by commission, or letters, &c. they declaring their said authority: or being required by their said Landlord or Landlords for the time being, to whom the rents of such farmes shalbe then rising, growing, or comming, to serue the king, for any the causes aboue rehearsed, and refuse so to doe, shall (during onely the life of such farmer or farmers so refusing) forfeit and lose to such Landlord and Landlords as should haue had the rents of such farmer during the life and liues of such person and persons so refusing, all their said farmes. And it shall be lawfull to euery such Landlord &c. their heires and assignes to whom the rents of such farmes should haue béene due, during the life of such person or persons so refusing (in case he or they had not refused) to enter and take into his or their hands or possession all such farmes, and to retaine the same onely during the life of euerie such offendor or offendors. But after the death, expiration, or determination of the interest or terme of yeares of euery such copieholder, customary holder, or farmer, as so shall offend, and forfeit any of the said copieholds, customarie holds, or farmes, as is aforesaid: then euery such person as should, or ought to haue had the copieholds, customarie holds, or farmes, after, or by the death, expiration, or determination of the interest, or terme of yeares of such copieholder, customarie holder, or farmer (in case such copieholder, customary holder, or farmer, had not so offended ne forfeited) shall and may haue the same copie hold, customary holds, and farmes by entrie, action, admission, or otherwise, in like maner, forme, and condition, and by such meanes, as they and euerie of them should, might, or ought to haue had, if no such forfeiture or offence had béene had, done, or committed. 1.M.13.

Disclosing a commotion when one is moued.

40 If any person shall be spoken vnto, moued, or stirred to make any commotion, insurrection, or vnlawfull assembly for any of the intents aboue mentioned, and do not within xxiiij. houres next after he shall be spoken vnto, moued, or stirred (vnlesse he haue good and reasonable cause of excuse) declare the same vnto one Justice of the peace, or sheriffe of the said countie, or to the maior, sheriffes, bailifes, or other head officers of any citie or towne corporat, where such commotion &c. shall be had; he shall suffer imprisonment by the space of three moneths, without baile or mainprise, vnlesse he shall be discharged by iij. Justices of peace (whereof one to be of the Quorum) of the same shire where the offence shall be committed. 1.M.13.

An able person required refuseth to serue.

41 If any person being aboue the age of eightéene yeares, and vnder the age of threescore, being able to serue, and not sicke, lame, or impotent, shall be required

required by any Iustice of peace, or any Sherife of any Countie, where any such assembly shall be, or by any Maior, Bailife, or other head Officer, of any citie, borough, or towne corporat, or by any other by the commaundement of any such Iustice, Sherife, Maior &c. to goe with him, or them, to suppresse the persons vnlawfully assembled in manner and forme aforesaid: then euery person which so being able, and required, doth willingly and obstinately refuse so to doe, shall suffer imprisonment for one whole yeare, without baile or mainprise. In able person required refuseth to serue.

1.M.12. 42 If the king shall by his Letters patents make any Lieutenant in anie countie or counties of this Realme, for the suppressing of any commotion, rebellion, or vnlawfull assemblie: then as well all Iustices of peace, and the sherife and Sherifes of the same, as all Maiors, Bailifes, and other head Officers, and all inhabitants and subiects of any countie, citie, borough, or towne corporat, within euery such countie, shall vpon declaration of the said Letters patents and request made, be bound to giue attendance vpon the same Lieutenant, to suppresse any commotion, rebellion, or vnlawfull assemblie, vnlesse he so required haue any reasonable excuse for his not attendance, vpon paine of imprisonment for one whole yeare. Attendance vpon a lieutenant.

1.M.12. 43 The order and forme of the Proclamation that shall be made by the authority of this Act, shall be as hereafter followeth, or with the like order and words in effect, viz. The Iustices or other persons authorized by this Act, to make the said Proclamation, shall make or cause to be made an Oyes, and after that shall openly pronounce or cause to be pronounced these words, or to the like effect: The king our Soueraigne Lord chargeth and commandeth all persons being assembled, immediately to disperse themselues, and peaceably to depart to their habitations, or their lawfull businesse, vpon the paine contained in the act, lately made against vnlawful and rebellious assemblies: And God saue the king. The forme of the proclamation.

1.M.12. 44 If any person or persons do, or shall molest, let, hinder, or hurt any person or persons, that shall proclaime, or go to proclaime, according to the proclamation and order aforesaid, whereby such proclamation shall not be made: then euery such person so molesting or hurting, &c. and hauing knowledge of his message, shall incurre such danger, and suffer such paines and forfeitures, as the persons assembled, to whom the proclamation should haue been made, should by this Act incurre, for not obeying the Proclamation (if it had beene made,) or for doing after the Proclamation of any the things before expressed. And also all such persons being assembled to the number aforesaid, to attempt or do any the things aforesaid, to whom proclamation should or ought to haue beene made, if the same had not beene let, shall likewise in case they do after put in ure, and doe any the things aforesaid, hauing any waies knowledge of the let so made, or by any meanes procuring the same let, incurre like danger, and suffer like paines and forfeitures aforesaid, in euery their degrees, as though the proclamation had beene made: any clause, article, &c. in this act &c. notwithstanding. Hinderance of the proclamation.

1.M.12. 45 All and euery the heire and heires of all and euery the offendors and offensors in any the cases aforesaid, and all and euery person and persons, bodies politicke and corporat, their heires, successors, and executors, and euerie Other mens right saued.

of them (other than such person and persons onely, as shall be attainted, conuicted and outlawed of any the foresaid offences of felony) shal haue, hold, and enioy all such right, title, entry, interest, leases, possessions, rents, conditions, profits, and aduantages, as they, or any of them shall, or of right ought to haue, in, or to any mannors, lands, rents, reuersions, seruices, or hereditaments whatsoeuer, or in, or to any part thereof, in as large manner to all intents, as if such attainder had neuer beene had: any thing in this Act &c. notwithstanding &c. Sauing to euery person and persons, bodies politicke and corporat, and their successors, their liberties and franchises in such maner, as if this Act had neuer beene made.

Procuring others to offend.

46 If any person or persons doe moue, stirre, or procure any person or persons, to commit any of the offences in this Act specified: then euery such person and persons which shall procure, stirre, or moue any person or persons so to offend, shall suffer such punishment by imprisonment, without baile or mainprise, as is before expressed in this Act against counsellors of such offendors. 1.M.12.

Vnlawfull assemblies by rl. or abone.

47 If any persons to the number of foure, or more, shall assemble together in forcible manner vnlawfully, and of their owne authoritie, to the intent to execute, doe, or put in vre any of the things abone specified, or to do any other felonious or rebellious act or acts, and so shall continue together by the space of three houres after proclamation shall be made, at, or nigh the place where they shall be so assembled, or in some market towne thereunto next adioyning, and after notice to them giuen thereof: Then euery person so willingly assembled in forcible maner, and so continuing together by the space of three houres after such proclamation made, and notice thereof giuen, shall be adiudged a felon. 1.M.12.

Lieutenants shall not appoint a deputie.

48 No lieutenant that shall be made by authoritie or colour of this Act, or for to execute this Act, shall constitute vnder him, or in his place, any deputie, nor shall call or appoint to appeare before him, by the onely authoritie of lieutenancie, or of commission of lieutenancy any person for any cause or matter whatsoeuer, saue only for the causes and matters expressed in this Act, and for none other. 1.M.12.

Aiding of the offendors after the offence.

49 No person or persons shall be put to any losse, forfeiture, paine, or punishment, of life, land, or goods, as accessorie to any person or persons, that shal commit any of the offences contained in this Act, for receiuing, comforting, or aiding of any such offendor, after such act committed or done. 1.M.12.

The attainder of those offences no corruption of blood.

50 No attainder or conuiction of any person or persons, for any offence or offences herein contained, shall be any corruption of blood betwixt the offendor and any of his auncestors, or such person or persons as should haue beene heire to such offendor, if no such attainder or conuiction had beene had: sauing to euery person and persons, bodies politicke and corporat, &c. their liberties and franchises, in such maner as if this Act had neuer beene made. 1.M.12.

Of

Of Force, forcible Entries, and forcible retayning of possesions.

1 FOrce and violence executed without warrant of Law, be so meere contrarie to the Peace and justice of the Realme, as disobedience is to loyaltie, and contempt to government: for whosoeuer doth make a forcible entrie into lands in the possession of an other, doth secretly reuolue in his mind, and distrust to himselfe, that there is no Law in the Realme to redresse his wrong, or no ministers to execute the same; and therefore he will sit in iudgement of that cause himselfe, and take into his owne hands the distribution of justice, and assume into his possession by the strength of his arme, what the phantasie of his head shall resolue to be his due; whereas the Law in conuenient time would truely satisfie him, whether the land in question, by the rules of justice be his, or not, and also assigne him a milde and calme course to recouer all his whole dutie, with valuable damages for the time he is iniured. And because this force and forcible entrie into lands, is so opposite and meere repugnant to the peace and justice of the Realme, and tendeth so much to the dishonour of the King, and his Crowne, and the discredit of the Law, that any person by byrth and oath denoted to the obedience of the King, and his Lawes, should presume of his owne authoritie, by force, and stronge hand to resist them both, and as it were in contempt of them, violently to intrude himselfe into an other mans possession, before the Law hath decided his title therein: Therefore the wisedom of the Realme, hath by the space of many generations first prouided to restraine those forces, and forcible Entries, and next to inflict condigne punishment vpon them, which were offendors therein: Whereupon by a Statute made Añ 5. R. 2. the King defended, that none from thencefoorth should make any Entrie into any lands and tenements, but in case where entrie is giuen by the Law, and then not with strong hand, nor with multitude of people, but only in a peaceable course & maner. And if any from hencefoorth do the contrarie, and thereof be duely conuict, he shall be punished by imprysonment of his bodie, and thereof ransomed at the Kings pleasure.

Vnlawfull force an enemy to peace.

There shal be no forcible entry into lands.

Ent. 1. R. 2. 7.

2 But for that the said Statute of 5. R. 2. did giue no spædie remedie to those which were expelled out of their lands or tenements, nor assigned any speciall

speciall persons to suppresse the said disorder: Therefore by an other Statute made Ann 15. R. 2. it was further ordained, That when any such forcible entrie shall be made into lands or tenements, or into any Benefices or offices of the church, and the complaint thereof come to the Justices of the peace, or any of them, that the same Justices or Justice take sufficient power of the County, and go to the place where such forcible entrie is made, & if he or they find any that holdeth such place forcible after such entrie made, they shall be taken, and put into the Gaole, there to abide conuict by the record of the same Justices, or Justice, vntill they haue made fine and ransom to the King. And all they of the Countie, aswell the Shirife, as other, shall be attending vpon the Justices to go and assist the same Justices, to arrest such offendors, vpon paine of imprisonment, and to make fine to the King. St. 15. R. 2. 2.

The penaltie of forcible entrie into lands or benefices.

3 And forasmuch as the said Statute of 15. R. 2. doth not extend to Entries into tenements in peaceable manner, and after holden with force, nor if the persons which enter with force into any lands or tenements be wholy remoued and departed before the comming of the said Justices, or Justice; Neither is there any paine ordained, if the Shirife do not obey the precepts of the Justices in this behalfe. Therefore by an other Statute made Ann 8. H. 6. it was ordained, that the said former Statutes should be continued and executed. And further, that where any do make such forcible entrie into lands, tenements, or other possessions, or hold them forcibly, after complaint thereof made within the said Countie where such entrie is made, to the Justices of peace, or to one of them by the partie grieued, that the Justices or Justice so warned, within a conuenient time cause the said Statute to be executed, and that at the costes of the partie so grieued. And whether such persons making such Entries be present, or gone before the comming of the said Justices or Justice, presently the same Justices or Justice in some good Towne next vnto the tenements so entred, or in some other conuenient place, according to their discretion, shall haue authoritie to inquire by the people of the same Countie, aswell of them that made such forcible entries into lands or tenements, as of them which hold the same with force. And if it be found before any of them, that any doth contrarie to this Statute, then the said Justices or Justice shall cause the lands or tenements so entred or holden as aforesaid to be reseised, and shal put the party so put out, in full possession of the same lands or tenements so entred or holden, as before they were entred or holden. And if any person after such entris into lands or tenements holden with force, make a feoffement or other discontinuance to any Lord, or other person to haue maintenance, or to take away and defraud the possessor of his recouerie in any wise, if after in an Assise, or other action thereof to be taken or pursued before Justices of Assise, or other the Kings Justices whatsoeuer they be, by due inquirie thereof to be taken, the same feoffements and discontinuances may be duely proued to be made, for maintenance, as is aforesaid, then such feoffements or other discontinuances so as before made shall be void. And if any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceablie, and after holden out with strong hand, and armes, against the Justice of peace; or after such entry, any feoffement or discontinuance in any wise thereof be made, to defraude & take away the right of the possessor, the party grieued in this behalfe, shall haue an Assise of Nouel disseisin, or a writ of Trespas against such disseisor. And if the party grieued recouer by Assise, or by action of Trespas, and it be found

Holding possession by force.

Feoffement of lands for maintenance.

An Assise or action of trespas against a disseisour by force.

found by verdict, or in any other manner by due forme of the Law, that the partie defendant entred with force into the lands & tenements, or them after his entrie did hold with force, then the plaintife shall recouer treble dammages against the defendant, and moreouer the defendant shall make fine and ransome to the King. And the Maiors, Iustices and Iustice of peace, Shiriues, and Bailifes of Cities, and Boroughes hauing fraunchise, shall haue in the said Cities, Townes, & Boroughes, like authority to auoid such Entries, and in other articles aforesaid, riſing within the same, as Iustices of peace and Shiriues in Counties and Shires haue.

The authority of officers of Cities and Townes enfranchised.

4 As by the foresaid Statute of 8.H.6. if any person after entrie into lands or tenements holden with force, shal make any feoffement or other discontinuance thereof to any Lord or other person, to haue maintenance, or to defraud the possessor of his recouery, then the same feoffements & discontinuances shall be void: So by an other Statute made before that Anno 4.H.4. it was inacted, That if any man in his owne right to his vse, or in another mans right to his vse, doth make any forcible entrie into an other mans lands by way of maintenaunce, or doth take or carry away any goods of the possessors of the freehold after any such forcible entrie; then if the partie grieued or other lawful man will affirme, that the entry was made in such forcible manner, the Chancellor of England may graunt to the partie grieued a speciall Assise: And if the disseisor be attainted of such forcible disseisin, he shall be one yeare imprisoned, and pay to the partie grieued his double dammages, and also dammages for his goods. And one of the Iustices of the one Bench, or of the other, or the chiefe Baron of the Exchequer (if he be learned in the law) shall be named in euery such speciall Assise. And no Supersedeas shalbe granted to the contrarie of such Assise.

Sta. 4.H.4.8.

A speciall Assise against a disseisor with force.

5 Wherefore, if a man be disseised by force of any lands or tenements by way of maintenance, or that his goods be taken or carried away after such entrie made: Or that he be put out, or disseised of his lands in forcible manner: Or that he be put out peaceablie, and after holden out with force against a Iustice of peace: Or after such entrie, any feoffement or discontinuance be made to defraud and take away the right of the possessor; then the partie grieued (as his case requireth) may haue a speciall Assise against the disseisor, & recouer his double dammages, & dammages for his goods, and the disseisor shall be one yeare imprisoned, according to the foresaid Statute of 4.H.4. Or else he may haue an Assise of Nouel disseisin, or an action of Trespas against the disseisor, and recouer treble dammages; and moreouer, the disseisor shall make fine and ransom to the King, according to the before rehearsed Statute of 8.H.6. Or if the plaintife will omit the benefit of recouerie of his dammages, he may only craue and vse the assistance of a Iustice of peace, to see and remoue the force, to record it, to inquire of it, and to make him restitution, according as the truth of his case shall appeare to the said Iustice vpon his owne sight, or be found by inquisition, according to the former prouision of the said Statute of 8.H.6. Or lastly, he that is put out, or holden out of his lands with force, may haue a writ directed out of the Chauncerie to the Shirife only, or to the Shirife and the Iustices of peace vpon the Statute of Northampton made Añ 2.Ed. 3. commaunding that proclamation may be made vpon that Statute.

Generall remedies for seuerall offences by force.

Sta. 4.H.4.8.

Sta. 8 H.6.9.

Sta. 2.E.3.3.

6 And

6 And for that it is conuenient, that he who is with force expelled out of his lands, or by force detained from the same, should not be long kept out of possession thereof, but that there should be a spædie redresse to restore him to his owne: and also because it is meant, that the inquisition of that force should be made by men of good estate, and so the more like to be indifferent, of better vnderstanding, and to declare the truth in those cases: Therefore by the foresaid statute of Anno 8. H. 6. it was moreouer ordained, That when the said Iustices or Iustice shall make such inquiries, as are beforesaid, they shall cause their warrants and precepts to be directed to the Shirife of the same Countie, commaunding him on the Kings behalfe to cause to come before them, and euery of them, sufficient and indifferent persons, dwelling next about the lands so entred vpon as before, to enquire of such entries, whereof euery man that shall be impannelled, and may inquire in this behalfe, shall haue lands or tenements to the value of xl. s. by the yeare at the least aboue reprises, and that the Shirife returne issues vpon euery of them at the day of the first precept returnable xx. s. and at the second day xl. s. and at the third day fiue pounds, and at euery day after, the double. And if any Shirife or Baylife within a fraunchise, hauing the returne of the Kings writs be slacke, and make not execution duly of the said precepts to him directed to make such inquiries, he shall forfeit to the King xx. li. for euery such default, and moreouer shall make fine and ransom to the King. And aswell the Iustices or Iustice aforesaid, as the Iustices of Assise, and euery of them, at their comming into the Country to take Assises, haue power to heare and determin such defaults, and negligences of the said Shirifes, and Bailifes, and euery of them, aswell by bill at the sute of the party greiued for himselfe, as for the King, to sue by Inditement only to be taken for the King. And if the Shirife or bailife be duly attainted in this behalfe by Indictment, or by bill, he which sueth for himselfe, and for the King, shall haue the one moitie of the forfaiture of xx. li. together with his costs and expences. And the same proces shall be made against such persons indited, or sued by bill in this behalfe, as should be against persons indited or sued by writ of Trespas with force and armes against the Kings peace.

A precept to the Shirife to impannell a Iurie.

Shirifes forfaiture.

The proces.

Buck.

7 The forme of which precept by a Iustice of peace, to the Shirife to returne a Iurie, to enquire of Forcible entries is this. Edwardus Tirrill miles vnus Iusticiariorum dñi Regis, ad pacem in Comitatu Buck. conseruandam assignatorum vicecomiti eiusdem Comitatus salutem: Ex parte dicti Domini Regis tibi mando, quod venire facias coram me apud Thornborough in Comitatu prædicto 10. die Octobris proximo futuro 24. probos, sufficientes, & legales homines de viceneto de Thornborough prędicto, quorum quilibet habeat 40. solidos terrarum & tenementorum, vel reddituum per annũ ad minus vltra repriſas, ad inquirendum super sacramentum suum, si A. B. de Adstock in dicto Comitatu Buck. Blacksmith, & alij malefactores, & pacis dicti domini Regis perturbatores, in vnum mesuagium & 20. acras terrę & alia tenementa de C. D. husband. de T. prędict manu forti super possessionem dicti C. D. ingressi sunt, aut eadem cum fortitudine adhuc tenent & occupant. Et videas quod super quilibet Iuratorum in hoc parte impannellandorum xx. s. ad primum diem retornes; & hoc nullatenus omittas sub pœna xx. li. quam noueris te incursurum, si in executione premissorum tepidus aut remissus fueris. Et habeas ibi hoc præceptum. Dat apud Thornton xx. die Septemb. Anno Regni domini nostri Regis Iacobi &c. tertio.

The forme of a precept to the Shirife to returne a Iurie.

8 **The forme of an inquisition or verdit of the Jury which are returned and sworn to enquire of forcible Entrie into lands or tenements, or of the forcible detayning of them, taken by a Justice of peace, is this.** viz. Inquisitio pro domino Rege capta apud Buckingham in Com̃ prædicto xx. die N. Anno Regni domini nostri Regis Iacobi &c. quarto, super sacramentum A. B. C. D. E. F. G. &c. coram Thoma Temple milite vno Iusticiar̃ dicti domini Regis ad pacem in dicto Comitatu conseruandam assignatorum: Qui dicunt, quod vbi H. I. de Tyngswicke in Comit̃ prædict' husbandman, qui legitime & pacificè seisitus fuit in dominico suo vt de feodo, de vno messuagio cum pertinentijs in Tyngswick prædicto, & possessionem suam sic continuauit, quousq; L. M. de Maidsmoorton in Comitatu prędicto Laborer, & alij malefactores, & pacis dicti domini Regis perturbatores xxx. die O. iam vltimo elapso, vi & armis, viz. cum baculis, gladijs, arcubus, sagittis, fustibus, gunnis, & balistis in messuagium prædictum &c. intrauerunt, & ipsum H. I. inde expulerunt, & idem messuagium &c. a prædicto xxx. die O. vsq; ad diem captionis huius inquisitionis &c. cum huiusmodi fortitudine & potentia tenuer̃, & occupauerunt, in magnam pacis dicti domini Regis perturbationem, & contra formam statuti in tali casu ęditi & prouisi, vbi nullus eorum, nec aliquis alius cuius statum ipsi aut aliquis eorũ habuerunt, aut habuit, aliquid in eodem messuagio &c. aut aliqua inde parcella habuerunt, aut habuit, infra tres annos proximos ante ingressum suum prædictum, neque aliquo tempore præcedente ad notitiam Iuratorum prędictorum.

Buck. **The forme of an Inquisition of forcible entrie.**

9 **And for that the said Statute of 8. H. 6. hath ordained, That if it be found before any of the said Justices of peace, that any doth contrarie to that Statute, then the said Justices or Justice shall cause the lands or tenements so entred, or holden with force, to be reseised, and shall put the partie so put out in full possession of the same lands, so entred or holden, as before they were entred or holden: Therefore, when the Justice of peace shall by the said Inquisition be informed, or by the view of his owne eye perceiue, that any such forcible entrie into any lands hath bẽn made, or after the same lands be holden with force, he is either himselfe to reseise the same lands, and put the partie in possession againe, who was so forcible expelled or kept out of possession, or else he is to make his Precept to the Shirife of the same Countie to make restitution to the same partie. The forme of which warrant or precept is this,** viz. Georgius Throckmorton Miles, vnus Iusticiariorum dñi Regis ad pacem in dicto Comitatu conseruandam assignatorum, Vicecom̃ eiusdem Comitat̃, salutem. Cum per quandam Inquisitionem patriæ coram me captam apud East-Claydon in Comitatu prędicto 2. die Dec. Anno regni dñi nostri Iacobi quarto, super sacrm̃ A. B. C. D. E. F. &c. ac per formam statuti in hm̃odi casu prouisi compert̃ fuerit, qđ L. M. de Horwood magna in Com̃ p̃dict' husb' & alij malefactores & pacis dicti dñi Regis perturbatores, 26. die No. añ dicti dñi Regis nunc quarto, in quoddam messuagiũ &c. N. T. in East-Claydon p̃dicta, vi & armis ingressi fuerunt, ac ipsum N. T. inde expulerunt, & p̃dictũ messuagiũ &c. a p̃dicto 26. die &c. vsq; ad dictũ secundũ diem Decemb. manu forti & cum potentia tenuerunt, prout p̃ Inquisitionẽ p̃dictam plenius liquet de recordo: Ideo ex parte dicti dñi Regis tibi mando, & prędipio quod ad hoc debit̃ requisitus, vna cum posse Comitat̃ tui si necesse fuerit, accedas ad messuagium & cętera prędicta, ac eadẽ cum ptinentijs reseisiri facias, & p̃fatũ N. T. ad & in plenã possessionẽ suã inde, prout ipse ante ingressũ p̃dictũ fuerat, restituas, & mitti facias, iuxta formã dicti statuti, de Ingressibus manu fortũ factis, ęditi & prouisi. Et hoc nulla-

Buck. **A warrant to the Shirife to make restitution.**

nullatenus omittas ſub periculo incumbent. Teſte me ipſo G. Throckmorton. Datum apud Fulbrooke &c. tertio die Decembris &c.

Reſtitution awarded out of the K. bench

10 If a man be indicted before the Juſtices of peace in the County, for that he did with force expell and put an other out of his poſſeſſion of certaine lands within the ſame County, and after this indictment is remoued into the kings bench by a Certiorari, the Juſtices of the ſame court may award a writ of Reſtitution to the ſhirife of the ſame County, to reſtore poſſeſſion to the partie ſo expelled, though the words of the ſtatute of 8. H. 6. doe giue that authority only to the Juſtices of peace of the County, where the forcible entry is made: and if he be indited before Juſtices to heare and determine, and after the record is remoued into the Kings Bench, the Juſtices of the ſame court may award reſtitution: for that they who haue ſupreme authority, & do repreſent the Kings perſon, now haue before them the record whereby the party was indited. 7. E. 4. 18. 4. H. 7. 18. 15. H. 7. 5.

No reſtitution, but where the force is found by inquiſition.

11 By the words of the foreſaid ſtatute of 8. H. 6. it doth appeare, that one Juſtice of peace alone may remoue the force, and alſo enquire thereof, and ſo may diuers Juſtices. But by the foreſaid ſtatut no reſtitution can be made to the party put out of poſſeſſion, if the ſaid expelling or putting out of poſſeſſion be not found by inquiſition: nor but in caſe, where the words of the Indictment vpon the ſtatute of 8. H. 6. be, adhuc extratenet. 21. H. 6. 5. 14. H. 6. 16.

Where no reſtitution againſt three yeares poſſeſſion.

12 In the foreſaid ſtatute of 8. H. 6. there is a proviſo, That they which keepe their poſſeſſions by force in any lands and tenements, whereof they or their auncеſtors, or they, whoſe eſtate they haue in ſuch lands or tenements, haue continued their poſſeſſion by the ſpace of three yeares or more, be not endammaged by the force of the ſaid ſtatute. And by one other ſtatute made Anno 31. Eliz. for the explanation and declaration of the meaning and intent of the ſaid proviſo, and of the law therein, it was ordained, declared, and enacted, That no reſtitution vpon any indictment of Forcible entry, or holding with force, ſhalbe made to any perſon or perſons, if the perſon or perſons ſo indited hath had the occupation, or hath beene in quiet poſſeſſion by the ſpace of three whole yeares together, next before the day of ſuch indictment ſo found, & his, her, or their eſtate or eſtates therein not ended nor determined: which the party indited ſhall and may alledge, for ſtay of reſtitution, and reſtitution to ſtay vntill that be tried, if the other will deny or trauerſe the ſame. And if the ſame allegation be tried againſt the ſame perſon or perſons ſo indited, then the ſame perſon or perſons ſo indited to pay ſuch coſts & damages to the other party, as ſhalbe aſſeſſed by the Iudges or Juſtices before whom the ſame ſhal be tried, the ſame coſts and dammages to be recouered and leuied, as is vſuall for coſts and dammages contained in iudgements vpon other actions. If a man hath beene in quiet and peaceable poſſeſſion of lands three yeares or more by a good title, and then is expelled and diſſeiſed of them, and the party offending is therefore indited vpon the ſtatute of 8. H. 6. and the diſſeiſee who was expelled, is reſtored to his poſſeſſion by a writ of Reſtitution, and is in poſſeſſion accordingly, in this caſe he cannot iuſtifie the detainer of the poſſeſſion of thoſe lands, by force of the foreſaid proviſo contained in the ſtatute of 8. H. 6. becauſe his poſſeſſion was interrupted & diſcontinued, for that poſſeſſion muſt be three whole yeares together without interruption, before the ſaid party may by the ſaid proviſo keepe his poſſeſſion by force. And likewiſe if he that is a iuſt and lawfull poſſeſſor of lands by the ſpace of twenty yeares together, be once clearely 4. & 5. P. & M. Dyer 141. 3. & 4. P. & M. Dyer 141.

clearely & wholly remoued from the poſſeſſion of the ſame land, he cannot come againe with force, & a multitude of people to put himſelfe in poſſeſſion thereof, and detaine the ſame with force, by vertue of the Proviſo in the ſaid ſtatute of 8. H. 6. becauſe his poſſeſſion was interrupted. Neither in this caſe, if he be indicted of a Forcible entrie, according to the ſtatute of 8. H. 6. ſhall he be relieued touching his reſtitution by the foreſaid ſtatute of 31. El. for that he had not the occupation, nor had been in quiet poſſeſſion by the ſpace of three whole yeres together of the ſame lands next before the day of ſuch indictment found.

22. H. 6. 18. Fitz. Na. B. 249. But if a man be ſeiſed of a lawfull poſſeſſion by the ſpace of three yeares of any land without interruption, he may keepe his poſſeſſion by force againſt all others. And he is neither to be remoued from his poſſeſſion by a Juſtice of peace, though it be found by inquiſition, that he held that land by force, nor yet by an action of Forcible entrie brought againſt him vpon the ſaid ſtatute of

14. H. 7. 28. 8. H. 6. Otherwiſe it is of a diſſeiſor, or of a man that commeth to land by a wrongfull and vnlawfull title: for if he hath detained the land by force, three yeares, or twenty yeares, he may be indicted by vertue of the ſtatute of 8. H. 6. before a Juſtice of peace, of forcible detaining of the ſame land, and that being found, the ſaid Juſtice of peace is to reſeiſe the land, and to award reſtitution to the party diſſeiſed or expelled thereof. And alſo the ſame diſſeiſor ſhall make fine & ranſome to the King (cui nullum tempus occurrit) whoſe peace is broken by this long and vnlawfull detaining of the poſſeſſion of an other mans land by force. But the party diſſeiſed, expelled, or kept out of poſſeſſion, cannot in this caſe maintaine an action of Forcible entry vpon the ſaid ſtatute of 8. H. 6. againſt the ſaid diſſeiſor, ſeeing he hath omitted his time, and ſuffered the diſſeiſor to gaine of him three yeares poſſeſſion, & thereby the benefit of the ſame proviſo contained in the ſaid ſtatute of 8. H. 6.

where reſtitution notwithſtanding three yeares poſſeſſion.

1. R. 3. 4. 13 If a man who hath make an Entrie vpon the poſſeſſion of an other of any lands or tenements by force, or doth hold lands by force, after a peaceable entrie made, do doubt, that he ſhall be thereof indicted before a Juſtice of peace vpon the ſtatute of 8. H. 6. and that reſtitution will be thereupon awarded, he may haue a Certiorari out of the Kings Bench ready, and when the Bill of Indictment is found, he may preſently deliuer it to the Court, and that ſhall be a Superſedeas to ſtay Reſtitution, for that by this Certiorari the indictment ſhall be remoued. And though the Indictment be found after the Teſte of the writ of Certiorari, it is not materiall, for they be both the Kings Courts. And

A Superſedeas to ſtay reſtitution.

3. & 3. P. & M. Dyer 122. when an indictment vpon the ſaid ſtatute of 8. H. 6. is remoued into the kings Bench, and that the party indicted doth tender to trauerſe the ſame, the Juſtices of the ſame Bench may graunt or ſtay reſtitution, at their diſcretion, according as the truth of the Title ſhall appeare to them. But if a ſpeciall Seſſions be procured to inquire of a Forcible entrie, or detaining of poſſeſſion,

2. & 3. P. & M. Dyer 187. according to the ſaid ſtatute of 8. H. 6. and the Juſtices to whom complaint is made, do repaire to the place ſuppoſed to be entred vpon, or holden with force, and do ſee the ſame according to the ſaid ſtatute, & after they do inquire thereof, and that is found, and thereupon they graunt reſtitution; no other Juſtice of peace can graunt a Superſedeas to ſtay the ſame reſtitution: for by the ſaid ſtatute no other Juſtice hath authority to graunt reſtitution, but he or they to whom the complaint is made, and before whom the force is found, & the writ ſhall be graunted vnder the Teſte of one of them onely, ſauing the Juſtices of the K. Bench, who haue ſupreme authoritie, and where the law doth intend, that the King himſelfe doth ſit.

14 Whereas the words of the foresaid statute of 8.H.6. be: If it be found before any of the Iustices or Iustice of peace, that any doth contrary to this statute (viz. enter vpon, or hold lands with force) then the said Iustices or Iustice shall cause the lands or tenements so entred or holden to be reseised, and shall put the party so put out in full possession of the same landes or tenements so entred or holden, as before they were entred or holden. And therefore if the father be put out of possession of lands by force, and dyeth before or after inquisition thereof, his heire shall not haue restitution thereof vpon the said statute of 8.H.6. for that he was not the same person which was put out. And the same Law is, if after the death of the father, dying seised of certaine lands, a stranger doth abate, and holdeth the same lands by force against his heire, before he had gotten any possession indeed, and that force is found before a Iustice of peace by an inquisition, the same heire shall not haue restitution by the words of the said statute, for that the same heire had but a possession in law, and was not in actuall possession of that land, neither is he that party who was put out. And so it is, if tenant for terme of yeres of certaine lands be put out of his terme by force, and die, though after his death the force be found by inquisition taken by a Iustice of peace, his executors shall not be restored to the possession of that land by the same Iustice of peace, causa qua supra. But yet in the cases aforesaid the offendor shall be punished by imprisonment & fine to the K. for by his forcible entry he hath broken the peace. 8.a.8.H. 6.9.

Where force found, and no restitution.

15 Whereas by the before rehearsed statute of 15.Rich.2. it is ordayned, That when any forcible entry shalbe made into lands, and complaint thereof come to a Iustice of peace, he shall go to the place where the entry was made, and if he find any that hold any such place forcibly after such entry made, they shalbe taken and put into the Gaole &c. The forme of which Iustice of peace Mittimus, whereby he shall send the same offendors to the Gaole, is this, viz. Francis Forteſcue knight, one of the Iustices of peace of our Soueraigne Lord the King, within the county of Buckingham, to the keeper of his Ma. Gaole in Aylesbury in the said county, and to his deputy and deputies there, and to euery of them greeting: Vpon complaint made to me by A. B. of Whaddon in the said county husbandman, that C. D. E. F. of S. in the said county labourers, and other malefactores and disturbers of the Kings peace had forcibly and with strong hand entred into his house &c. in Whaddon aforesaid, and him expulsed, & the same yet held with force, I went this present day to the said house, and there found the said C.D.E.F. holding the said house &c. with swords and bucklers, bils and staues, to the great disturbance of his Ma. peace, and against the forme of the said statute in that behalfe ordained. And therefore I send you by the bringers hereof the bodies of the said C. D. E. F. conuicted of the said forcible holding by my record: commanding you and euery of you in his Maiesties name, that you receiue them, & safely keepe them in your said Gaole, vntil they shal haue made their fine and ransom to the King, and be deliuered thence by the order of the law. Hereof faile you not, vpon the perill that will fall thereof. Dated at Salden the 30. day of I. in the third yere of the raigne of our soueraigne Lord K. Iames &c. 8.a.15.R.2.2.

Buck. A Mittimus to send to the gaole such as do hold land by force.

16 And though the words of the before rehearsed statut of 8.H.6. be: Vpon complaint made to the Iust. of P. or one of them &c. yet those words do not alwaies bind a Iust. of P. to expect the complaint of the party grieued, or to omit to do his duty in inquiring of, repressing, & punishing of force, because the party grieued

grieued by the forcible entrie, or detaining of poſſeſſion, is ignorant in ſeeking lawfull redreſſe for his receiued iniurie, or doth intend to take his remedy by other meanes: but a Iuſtice of peace hauing notice of ſuch forcible entry, or detaining of poſſeſſion by force (though it be by others and not by the party grieued) may and of duty ought to goe to the place where the ſame force is committed, & to make inquiſition thereof; and if the force be found, to make reſtitution to the party expelled or put out by force. And ſo by his meanes the offendor ſhall be puniſhed according to his deſert, the partie wronged ſhall be reſtored, and the king ſhall be intituled to a fine, all which without the ſaid Iuſtices diligence would be omitted.

A Iuſtice may inquire of forcible entries without complaint.

7.E.4.18.

Fitz. Nat. Br. 248.

17 If a man that is ſeiſed of lands or tenements of an eſtate in fee ſimple, fee taile, for terme of his owne life, or for the terme of anothers life, be diſſeiſed or expelled thereof by force, he may haue an action of Treſpas of forcible entry vpon the foreſaid ſtatute of 8.H.6. againſt him or them that did ſo diſſeiſe or expell him thereof: and ſo he may, if he be put out, or diſſeiſed of his lands or tenements peaceably, and after the diſſeiſor, or he that doth expell him, doth hold them with force. And in like ſort he may haue the ſame action, if any doth enter into his ſaid lands or tenements with force, & after doth defend and hold them by force, then he which is ſo put out and holden out with force, may haue this action, though the words of the ſtatute be in the diſiunctiue, viz. diſſeiſed with force, or diſſeiſed quietly and after holden out with force: for that the intent of the ſtatute was to puniſh all ſuch forces, whether it were vpon the entry & diſſeiſin made, or vpon the holding and detaining of the land with force: in all which caſes, he who is ſo diſſeiſed or put out, may haue an action of forcible entry vpon the ſaid ſtatute of 8.H.6. and ſhall recouer his damages & coſts to the treble of that which ſhall be found by the Enqueſt, that he is endammaged, & hath ſpent in his ſuit, & as well for the occupation as for the firſt entry. And it is to be noted, that the writ & declaration in an action of forcible entry, muſt be, that the def. entred vi & armis, and not illicitè, or by any other ſuch words: for if the writ be otherwiſe, it ſhall abate; ſeeing a writ of forcible entry is alwaies vi & armis, and proces of Outlawry lieth in it: and the declaration muſt expreſſe the certainty of the land, whereupon the defendant did make his forcible entry, and which they be, and not ſuggeſt, that he did enter vpon certaine lands in D. And in this action of Forcible entry, and in all actions Quare vi & armis, a Capias doth lie, and where a Capias doth lie in the proces, there after iudgement a Capias ad ſatisfaciendum doth lie, and there the king ſhall haue a Capias pro fine.

In action of forcible entry.

The writ of forcible entry muſt be Vi & armis.

19.H.6.6.
22.H.6.37.
9.H.6.19.
37.H.6.23.
38.H.6.1.
35.H.6.6.
39.E.3.2.
Co.Lib.3.12.

Fitz. Nat. Br. 248.

18 None can purſue or maintaine this action of Forcible entry, but he who hath freehold at the leaſt in the lands or tenements ſo entred vpon: for tenant for terme of yeares, or a copyholder, cannot maintaine this action, for that the words of the ſaid ſtatute of 8.H.6. be, If any perſon be put out, or diſſeiſed of any lands &c. and the words of the writ grounded vpon the ſaid ſtatute be, Expulit & diſſeiſiuit: and tenant for terme of yeares, or a copyholder, cannot be diſſeiſed, ſeeing diſſeiſin is alwaies of a freehold, which neither of them haue in that land. But if tenant for terme of yeares, or a copiholder, be put out by force, or put out peaceably, & after holden out with force, of land which either of them doth hold by the ſaid eſtate: then vpon complaint made by the partie grieued to a Iuſtice of peace, after inquiſition thereof by a Iury, and the ſame force found, the ſaid Iuſtice may reſeiſe the ſaid lands, and cauſe reſtitution

Who may bring an action of forcible entrie.

Stat.8.H.6.9.

ſtitution thereof to be made to the party ſo put out: for in this caſe the ſame complaint may be made to the ſaid Juſtice of peace aſwell by him in the reuerſion, as by the tenant for terme of yeares, or copiholder: ſeeing he in the reuerſion who is diſſeiſed of his freehold by this forcible entry, is and may as well be termed the party grieued, as the tenant for terme of yeares, or the copyholder for their ſaid particular eſtates. And when the Juſtice of peace hath made reſtitution, the particular tenant for terme of yeares, or copyholder, and alſo he or they in reuerſion ſhall hold & inioy their ſaid ſeuerall eſtates in the ſame lands, in ſuch ſort as they did before the ſaid Forcible entrie made. But if tenant for terme of yeares be expelled out of that land which he ſo holdeth for the terme of yeares, he in the reuerſion cannot bring an action of Forcible entry vpon the ſtatute of 8.H.6. for the ſame, although it be a diſſeiſin to him, for that the expulſion is not done immediatly to him. 4. & 5. P. & M. Dyer 142.

He that hath title entreth by force.

19 If a man do enter by force into lands or tenements, whereunto he hath right or title to enter, and doth put out him who hath the freehold of the ſame lands, in this caſe he who is ſo put out by force, cannot maintaine an action of Treſpas of forcible entry againſt him, who hath title to enter, for that his entry was no diſſeiſin to the other, who was not lawfully ſeiſed thereof: but he may indite him for this forcible entrie, and this indictment being found, he ſhalbe reſtored to his poſſeſſion againe by a Juſt. of peace by vertue of the ſaid ſta. of 8.H.6. And after that, he that did firſt enter forcibly by lawful title, may again enter peaceably, or bring an Aſſiſe of Nouel diſſeiſin at his pleaſure. Fitz. Na. Br. 248. 19.H.6.19. 22.H.6.18.

He that hath poſſeſſion ſueth a writ of forcible entrie.

20 If a man do enter into lands or tenements, & diſſeiſe one with force, and after the diſſeiſee doth reenter again, yet the ſame diſſeiſee may purſue an action of Treſpas of forcible entry againſt the diſſeiſor, & recouer his treble damages, though he be ſeiſed of the land at the time of the writ brought. And therefore it is not a ſufficient plea in a writ of forcible entry, for the def. to plead, that the plaintife was ſeiſed of the ſame land the day of the ſaid writ brought. Fitz. Nat. Br. 249. 22.H.6.37.

Forcible entrie of a rent or common.

21 A man may haue a writ of Forcible entry of a rent, as well as of land: for one may diſtraine with force for rent, and that doth counteruaile an entry with force. And one may haue a writ of Entrie of a rent, which doth ſuppoſe, that the def. did enter into the rent. And in an Aſſiſe of rent, the diſſeiſin may be found to be done by force. If there be three Joint enants of land, out of the which there is a rent going, & vpon a diſtreſſe taken, one of them maketh reſcous by force, he only ſhal be impriſoned, & yet the others be diſſeiſors. And the like law is of a common of paſture, for a commoner may by force be expelled or kept out of his common. And a man may keepe his beaſts in another mans ground by force, claiming common where he hath no common, and that is diſſeiſin by force. And in either of the caſes aforeſaid, a Juſtice of peace vpon complaint to him made, may remoue the force, but not award reſtitution, becauſe they are to be taken and vſed in an other mans land. 20.H.6.12. 22.H.6.23. 39.Aſſ.p.4. 27.Aſſ.p.30.

Forcible entrie to the vſe of an other.

Forcible detaining by words only.

22 If diuers do enter with force to the vſe of another, who himſelf doth not enter, but after doth agree to this entrie to his vſe, this agreement doth make him a diſſeiſor, or a treſpaſſor: but he ſhall not therby be puniſhed for the force, for there can be no forcible entry without an actuall entry. And yet there may be a forcible detaining of poſſeſſion by words only, without act: as if he that hath wrongfully but peaceably entred into another mans houſe, & expelled and put 2.H.7.16. 17.Aſſ.p.14.

put out the owner thereof, shall say to the same owner, if he do come thither againe to enter, he will kill him, this is a forcible detaining of possession.

8.Ed.4.9.& 19. 10.H.7.27. Fitz.Nat.Br. 249. 21.Ed.4.10. 18.H.6 5.

Iointenants or tenants in common expelling each other by force.

23 If there be two Iointenants or tenants in common of certaine lands, and one of them doth expell and put forth the other out of possession of the said lands by force, he that is so expelled, may haue an action of Trespas of forcible entry against his companion that did so expell him, vpon the said statute of 8.H.6. for the words of the writ may be verified, Expulit & Disseisiuit, and thereupon he shal haue a writ of Restitution to restore him to his former estate. But if one iointenant or tenant in common of lands doe expell the other by force out of the same lands, he that is so expelled, cannot maintaine a writ of Entry vpon the statute of 5.R.2. against his companion that so put him forth, and suppose that he did enter into the same lands vbi ingressus non datur per legē: for that his entry and possession in that land is lawful through the whole land in respect of his owne moitie or estate: and further, seeing by that action the plaintife is to recouer but only dammages as in an action of Trespas, and not to be restored to his possession: which action of Trespas one iointenant or tenant in common cannot maintaine against another, for any Trespas done in the land so holden by them.

8.Ed.4.9.& 19.

4.H.7.1.

Who may bring a writ of Entry vpon the statute of 5 R.2.

24 None can maintaine a writ of Entry vpon the said statute of 5.R.2. vbi ingressus non datur per legem, but onely tenant in fée simple, tenant in fée taile, or tenant for terme of life at the least: for tenant for terme of yeares, a copyholder, or a tenaunt at will cannot pursue and maintaine it, seeing they haue but the manurance and occupation of the land. Neither can the King bring the said action, nor an Assise, Iectione firmæ, nor action vpon the statute of 8.H.6. Nor any other action which doth proue him out of possession of the land.

Plow. Com. 467.

Turning a watercourse by force.

25 If a man do enter into another mans ground, and turne away by force an ancient watercourse, which he hath running to his mill, the party grieued may haue a speciall Assise of Nusance vpon the statute of 4.H.4. against the offendor, & recouer his double damages, and yet he was not put out, nor disseised of his freehold, but a Nusance was done to the dammage thereof.

Lib.Inf. fol. 330. Fitz. N.Br. 249. 14.H.6.16. 22.H.6.57. 22.H.6.17. 9.H.6.19. 21.H.6.39.

The plea of not guilty in forcible entrie

26 In a writ of Forcible entry, the defendant may plead not guilty, & that shalbe a good plea. But if the defendant doe plead some matter in barre, yet he must in the end of the barre trauerse and deny the entry with force, which is alledged against him, as to say, without that he did enter with force &c. And the plaintife must answere to that speciall matter alledged in the barre, without answering to the Trauerse of the force, and vpon that speciall matter the issue must be ioyned, and not vpon the force. And if that speciall matter alledged in the barre be found by verdict with the defendant, he shalbe excused, and the force shall not be inquird of. But if it be found with the plaintife, and against the defendant, then the defendant shalbe attainted of force, and render treble dammages, and treble costes, without inquirie of the force. As, one brought an action of Forcible entry vpon the statute of 8.H.6. and suppoled that the defendant with force and armes entred into a messuage &c. Whereunto the defendant pleaded, That a stranger was seised of the same messuage &c. and enfeoffed him thereof, by means whereof he entred peaceably, without that, that he entred by force. And the plaintife made a title, and trauersed the

The finding of the speciall matter, doth charge or discharge the def. of force.

15.H.7.17.

barre, and the issue was found for the plaintife: and thereupon it was adiudged, that the force should not be inquired of: For sering the title is found against the defendant, he shall be conuict of the force, as on the other side, if the barre had beene found for the defedant, the force should not haue beene inquired of: for that if the title of the plaintife be not good, although the defendant doth enter with force, the plaintife hath no cause of action; and yet in that case, he that entreth with force, shalbe indited thereof, and shall pay a fine to the K. therefore. And if the defendant doth enter peaceably, where his entry is not lawfull, he may plead, that he did not enter contra formam statuti, and by that meanes the force and the disseisin shalbe inquired of. But if he make a title to the land by pleading in barre, as is aforesaid, then it shalbe adiudged his owne folly. As in a writ of Forcible entry, when the defendant doth plead in barre, yet he must trauerse the force: So in a presentment of Forcible entry before the Iustices of peace, it was found and presented, that A. was seised of the manor of B. in his demesne as of fee, vntill C. did enter vpon the said manor, and put him out with force and armes against the kings peace. And this presentment being remoued into the kings bench, and proces being awarded for the king against C. he appeared and pleaded to the force and armes, & all that is against the peace, not guilty. But the court enforced him to plead to his entry, and then he iustified his entry by reason of a remainder intailed to his father of the same land, and that his father entred and died seised thereof, & that he as heire to his father did enter. And so it is, if a man be indited for the taking away of certaine goods by force and armes, he shal answere to the taking, and if he be found guilty of the Trespas, there shall be no inquirie made of the force and armes.

Presentment of forcible entry.

1.H.7.19.

7.H.6.13.

One action for entring & detaining with force.

19.H.6.32.

27 A man brought an action of Forcible entry against diuers others vpon the statute of 8.H.6. and counted, that they did with force & armes enter vpon his land, and put him out, and so declared according to the statute, whereupon they were at issue. And it was found by verdict, that some of the defendants entred vpon the land with force and armes, and did not hold it with force, and some others of them did enter peaceably into the same land, and held it with force and armes: and so the Iurie tared the dammages seuerally vpon both those points: vpon which verdict it was adiudged, That the plaintife should recouer treble damages against those that entred forcibly, and also should recouer treble damages against those that entred peaceably, and held with force, and the costs of his suite: and further, that the said plaintife should bee amerced, for that he supposed that all did enter with force, which was found against him. And in like sort, if two be indited of Forcible entry and detayning with force, and vpon their Trauerse it is found, that one of them entred with force, and the other detained with force, yet restitution shall be awarded to the party put out of possession.

28 And further if a man do enter by force, or detaine by force any lands or tenements, the partie grieued may haue a writ out of the Chauncery, directed to the Shirife of the Countie onely, or to the Shirife and Iustices of peace, or some of them, vpon the statute made at Northampton Anno 2.E.3. The forme of which writ is this, viz. Iacobus Dei gratia &c. vicecomiti Buck. Salutem; Quia datum est nobis intelligi, quod quamplures malefactores, & pacis nostrę perturbatores, in conuenticulis congregati, armati, & modo guerrino arraiati apud Westburie accederunt, & clausuras, et domos quorundam legiorum nostrorum

Fitz. Na. Br. 249.

Sta. 2. Ed. 3. 3.

A writ vpon the statute of Northampt.

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rum ibidem per vim & potẽtiam armati intrauerunt, & res, redditus, & prouentus, ac alia bona ſua quæcũque de quibuſcunque poſſeſſoribus ſuis ibidem prouenientia capere conſenſerunt, & aſportare intendunt, & ad hoc parant, in noſtri contemptum, ac quorundam de populo noſtro ibidem terrorem & commotionẽ manifeſtam, ac contra formam ſtatuti apud Northampton de armis contra pacẽ domini Edwardi nuper Regis Angliæ tertij, progenitoris noſtri, non portandis editi, & contra pacem noſtram. Nos ſtatutum prędictum inuiolabiliter obſeruari, & idem infringentes iuxta vim & effectum eiuſdem ſtatuti caſtigari facere volentes, & puniri: Tibi præcipimus quod apud villã de Weſtbury, & alibi in comitatu tuo vbi neceſſe fuerit publicè proclamari, & ex parte noſtra firmiter inhiberi facias, ne quis cuiuſcunq; ſtatus ſeu conditionis fuerit ibidẽ armatus cõtra pacem noſtram, ac contra formam ſtatuti prædicti accedat, nec armatam potentiam, nec quicquid aliud ibidẽ, ſeu alibi facere, per quod pax noſtra, ſeu ſtatutum p̃dict' lædi, vel populus noſter turbari, terreri, aut indebitè grauari poterit quouiſmodo ſub pœna amiſſionis armorum ſuorum, & incarcerationis corporũ ſuorum ad voluntatem noſtrã, prout in ſtatuto prædicto plenius continetur. Et omnes illos quos poſt & cõtra proclamationem & inhibitionem p̃dictã inueneris contraria facientes, vel per inquiſitionem per te modo & forma debita capiendam inueneris feciſſe, vnà cum armis, & armaturis ſuis ſecum inuentis, arreſtari, & capi; & corpora ipſorum arreſtatorum in priſona noſtra, quouſque aliud à nobis pro deliberatione ſua habueritis in mãdatis, ſaluo cuſtodiri, & arma & armatur' prædicta appreciari, & nobis inde reſponderi facias. Nos verò in Cancellaria noſtra ſub ſigillo tuo, de nominibus arreſtatorum prædictorum, & de armis, & armaturis ſuis, & quæ & cuiuſmodi fuerint, & de pretio, & de vero valore eorundẽ, ac de toto facto tuo in hac parte reddatis diſtinctè et apertè ſine dilatione certiores, hoc breue nobis remittentes. Teſte &c. When the ſherife or Juſtice or Juſtices of peace to whom the foreſaid writ is directed, hath cauſed three proclamations to be made according to the purport of the ſaid writ, then he or they may enter and make ſearch in the houſe, houſes, or place ſuſpected, and ſearch whether there be any force of armour or weapons worne, borne, or vſed againſt the ſaid proclamation, or otherwiſe he is warranted by the ſaid writ to inquire thereof by a Jurie. And if any ſuch armour or weapons be found, hee muſt impriſon the offendors, and ſeiſe and praiſe their armour and weapons ſo found with them to the kings vſe. And if vpon the proclamation they doe depart in peaceable manner, then he hath no warrant by the writ to commit them to priſon. But by this writ the ſherife or Juſtices haue onely authority to remoue the force, but not to put the party expelled in poſſeſſion againe.

5. Menace &c. 7.

29 Becauſe I haue written of force, forcible entry, and forcible detaining of poſſeſſion, it is conuenient that I ſhould ſomewhat declare, what the law doth accompt to be force, and what acts, and in what manner done to be forcible. This forcible entry or forcible detaining of poſſeſſion, which the ſtatutes before rehearſed doe prohibite, muſt be done with ſome weapons either offenſiue or defenſiue, as with ſwords, bucklers, pikes, iauelines, billes, clubs, pitchforkes, ſtaues, halberts, bowes and arrowes, croſſebowes, gunnes, harneis, caſting of ſtones or blocks, pouring of hot coales, ſcalding water, or lead, or with any other thing wherewith one man may hurt the perſon of another. And further, if a man doth enter vpon the poſſeſſion of another, or doth keepe a poſſeſſion taken with more ſeruants or attendants than hee doth commonly maintaine, it is force, and it ſhall be adiudged in him a forcible entry, or a forcible

What ſhall be ſaid to be force

Force by number of ſeruants.

10. H. 7. 11

forcible detaining of poſſeſſion. And ſo it is, if diuers doe come with bowes, billes, gunnes, or other weapons to a ground, or to a houſe, and enter without the diſturbaunce of any, this is an entry by force: for the words of the Statute of 5. Ric. 2. be, That none ſhall enter with multitude of people, but onely in a peaceable manner. And in like ſort, if a man do enter peaceably into a houſe, and after doth bring into the ſame more weapons than he and his ordinary family do commonly and vſually weare (beſides thoſe weapons that he doth find in the houſe, whereof he muſt make no vſe to defend his poſſeſſion) it is a forcible detaining of poſſeſſion. And moreouer, if complaint be made to a Juſtice of peace, that one hath entred forcibly into a houſe, and doth detaine the ſame with force, and the ſaid Juſtice of peace doth goe thither, and findeth the doores ſhut, and him or thoſe within denying him to enter, this is a detaining of poſſeſſion with force, though there be no weapon ſhewed or vſed, and though there be but one perſon within the houſe; for in this caſe the offendor doth vſe the doore as his buckler to keepe the poſſeſſion. If the Juſtice of peace doe find in the houſe any great number of people, or any perſons in harneis, or hauing harneis lying by them, this is a detainer with force. Wherefore in all the caſes aforeſaid the Juſtice of peace may take the power of the Countie, breake open the doores, and commit the offendors to priſon. And if a man doe mowe, reape, sheare, or ſickle corne or graſſe (or by ſuch other labor which cannot be done without the hands of man) whereunto he hath no title, this ſhall be adiudged an entry and diſſeiſin with force. If a man doe keepe his beaſts by force in an other mans ſeuerall ground, claiming common therein, whereas he hath no common there, this is a diſſeiſin of the land by force. And if a man doe enter into the poſſeſſion of an other mans land, and after doth fell or lop wood there, this is a diſſeiſin by force. If a man doe enter into an other mans houſe or land, and diſſeiſe or expell him thereof, and after doth carry away certaine goodes of the diſſeiſees, this is a diſſeiſin with force and armes, and the diſſeiſor ſhall be impriſoned for it.

Force by nũber of weapõs

11. Aſſ. pl. 25.

27. Aſſ. pl. 30

30. Aſſ. pl. 50

11. H. 4. 16

who may commit a forcible entry.

30 A woman couert may commit a diſſeiſin with force, and be impriſoned therefore: and ſo may an infant of the age of eighténe yeares or aboue commit a diſſeiſin by force, and be impriſoned. But if he be of tender age, he ſhall not be adiudged a diſſeiſor with force, nor be impriſoned.

16. Aſſ. pl. 7
14. Aſſ. pl. 18.
12. H. 4. 22
22. Aſſ. pla. 33

what force is lawfull to the perſons of mẽ.

31 Though force being oppoſed againſt the law, is a profeſſed enemy to the peace of the Realme, yet being vſed in the maintenance of the law, it is a principall protector of the ſame peace: for the law doth put the ſword of iuſtice into the kings hand to protect himſelfe and euery of his ſubiects from the violence and oppreſſion of others, and to releeue each one that hath iuſt cauſe of complaint, and thereby to yeeld him peace. Wherefore force is to be reſembled to fire, which being abuſed, may conſume the whole houſe, and being well guided is a meane to yeelde ſuſtenaunce and comfort to euery perſon therein. And ſo force may be lawfully vſed by all the kings Officers, Miniſters, and Subiects thereunto deputed (with the helpe of all others to aſſiſt them when neede ſhall require) to execute or aduaunce iuſtice, or the iudgements of the Law. It is lawfull force, where by all offendors in treaſon, felonie, and other great crimes, be apprehended, caried to priſon, brought to their anſwers, & receiue condigne puniſhments, inflicted vpon thẽ for their offences. It is lawful force, wherby the ſhirife, his vnderſhirif, bailifs, or deputies do with ſtrength apprehend any perſon by vertue of the kings writs, to anſwer or ſatisfie the pur-

7. Ed. 4. 16.

31.E.3.H.6.9 purport of the same writs. It is lawfull force whereby Iustices of peace doe remoue those vnlawfull Entries, or vnlawful detainings of possession which one man doth make into another mans land, contrary to the Lawes and Statutes aboue said, and whereby they do put him againe in possession, who was wrongfully disseised or expelled thereof. And it is lawfull force which Iustices of peace, Sheriffes, Coroners, Constables, Tithingmen, Headboroughs, Boroughholders, and all other charged and authorized to preserue the peace (together with their assistants, deputies, or assignes) shal vse in apprehending or committing to prison such as doe attempt to disturbe or breake the peace within their iurisdictions, or being commanded, will refuse to put in sufficient suerties for the keeping of the same peace.

32 As in the causes aforesaid force may be lawfully vsed to the persons of men, so in some other cases forces may be vsed, and forcible entries may be lawfully made into the lands and tenements of others. As for Treason, or Felonie, or suspition of Felonie, one may by force breake open a house, if the

13.Ed.4.9 doores be shut, to apprehend the Felon: For as a Felon is an enemie to the Commonwealth, so is it for the benefit of the Commonwealth to apprehend him: And the King as head of the Commonwealth hath interest in felonie to punish it, and so a house doth not defend an entry to pursue and arrest one that

7.Ed.3.16 hath committed felony, or is suspected thereof. As if one hath wounded a man, whereby he is in perill of death, and the offendor doth flie into a house, the constable or those that doe pursue him, may breake open the house to apprehend him, if the doores be shut. And in like sort, if a fray be made, or a quarrell be moued in a house, whereof the doores be shut, whereby the peace is broken, or like to be broken, the Sherife, a Iustice of peace, or a Constable may by force breake open the doore of the house to appease that quarrel, or to take suerty of the offendors to keepe the peace. And if a man be outlawed of treason or felonie, or in a personall action, whereby a Capias vtlagatum is directed to the Sherife to apprehend and take him, the Sherife may breake open the doores of the house, if they be shut, apprehend the same Outlaw, and commit him to prison. And if it be found by an inquisition before a Iustice of peace, that one hath entred into an other mans house by force, or doth detaine it by force after peacable entry made, he may breake open the house by force to reseise the same land, and to put the party so put out in possession againe; and so may the Sherife do, having the Iustices warrant. If a man be invited of Trespas, and a Capias pro fine is awarded to the Sherife to take him, the Sherife may breake

27.Ass.pla.35 open the house to take him, if the doors be shut. And in al cases where the king is party, the Sherife may breake the house of the party offending, or the house

Co.li. 91 where he is, to apprehend him, or otherwise to execute the kings proces, if the

13.Ed.4.9 doores be not open, or that he cannot otherwise enter: for where the king hath interest, the writ or action is in the nature of a writ of Non omittas propter aliquam libertatem. But this is to be obserued, that alwaies before the Sherife

Finc.Execution 252. or other Officer doth breake open the house or doores of any man, he must signifie the cause of his comming, and desire that the doore may be opened vnto him: for if there be no default in the owner, the law doth condemne the breaking of a house, which was prouided for the dwelling and safetie of men. And therefore in any of the cases aforesaid, if the Sherife do breake open the house, where some of the doores of the same be open, whereby he may enter, or that he may open the doore by the key, or without breaking, he is a Trespassor, and is chargeable therefore to the owner of the house in an action of Trespas. If one

where the house of a man may be broken by force, and where not.

man

man doe diſtraine another mans cattell, and after doe put them into a Caſtle, Fortreſſe, or other ſtrong hold, houſe, or place, and then the owner of the cattell, doth ſue a Replevine directed to the Sheriſe, to make deliuery to him of the ſame cattell: then if the ſame Caſtle, Fortreſſe, Houſe, or Hold, be not opened to the Shirife vpon his ſolemne requeſt, when he commeth to make deliuerance of the cattell, according to the purport of his writ, he may take the force and power of his County, and breake downe the ſame caſtle, fortreſſe, or houſe &c. and make deliuerance of the ſame cattell: for it would tend to the diſhonour of the king and his crowne, that the Sherife hauing the kings writ, ſhould be reſiſted with force by any of his owne ſubiects to execute the ſame, and to make deliuerance of the cattell. Stat. 3. H. 7. 17. 13. Ed. 1. 38.

When any houſe is recouered by one man againſt another in any reall action, or by an Eiectione firmæ, the ſherife hauing the kings writ of Habere facias ſeiſinam or poſſeſſionem, may breake open the ſame houſe, if the doores be ſhut, to deliuer ſeiſin or poſſeſſion to the demaundant or plaintife: for after iudgement the houſe in right and by the cenſure of the law is none of the tenants or defendants. Co. li. 5. 91.

But it is not lawful for the Sherife at the ſuit of any common perſon to breake the houſe of the defendant in the ſame ſuit, to execute proceſſe (though he doe make requeſt and be denied it) for thereupon might enſue great inconuenience, that vpon colour of any fained ſuit, a man ſhould haue his houſe (being his caſtle of defence) broken by day or by night, by any vnderſherife or Bailife, being many times of ſmall abilitie. And therefore if in that caſe the Serife breake any mans houſe to make execution of any proceſſe at the ſuit of a common perſon, he is a treſpaſſor to the owner of the ſame houſe, who may haue an action of Treſpaſſe againſt him therefore, as againſt any other perſon, and ſhall recouer his dammages. But notwithſtanding, the execution, which the ſaid Shirife ſhall then and there make, is good. And yet the houſe of a man is a caſtle, and place of priuiledge, but for himſelfe, his wife, ſeruants, and ordinarie reſidents, and for his owne goods: for it will not protect any other man which will flie into his houſe, or the goods of any other perſon which ſhall be brought into his houſe, to preuent lawfull execution, and to eſcape the ordinary proceſſe of the law. And therefore in any of theſe caſes, if the Sherife hauing proceſſe to doe execution vpon the body or goods of a man, doe make requeſt to haue the doore opened, or to haue the body of the partie flying thither, or the goods of an other brought thither, to be deliuered vnto him, and it be denied him, or that it be not done, the Sherife may breake the houſe, and execute the proceſſe. 18. Ed. 4. 4. Co. lib. 5. 93

33 As force is to be vſed lawfully, where it is for the benefit of the king, or to auaile the Commonwealth: ſo euery man being of himſelfe a little world, and his family a ſmall Commonwealth, and he the head thereof, may in diuers caſes defend the ſame Commonwealth by force. As if theeues or robbers doe come to a mans houſe, to rob or murther him, he may defend his houſe by force, and if he or his ſeruants do kill any of them, they ſhall receiue no hurt thereby. And if a man being in his houſe, doe heare that another will come to his houſe to beate him, he may lawfully aſſemble his neighbors and friends, to aſſiſt and aid him in the defence of his perſon: for his houſe is his caſtle, and place of protection and defence, where he muſt dwell. But if a man be threatened, that if he come to ſuch a Market or Faire, or to ſuch a place, that then he ſhall be beaten, in this caſe he may not aſſemble his neighbours and friends to goe thither, in ſafegard of his perſon, for there is no neceſſitie that he ſhould goe thither, ſeeing it would rather be a meane to ſeeke a quarrell, than to eſ-

In what caſes any perſon may defend himſelfe and his by force. Cok. lib. 5. 91. 26. Aſſ. pl. 23. & 32. Fitz. Cor. 303 305. 22. Aſſ. pl. 55. Sta. 24. H. 8. 5. 21. H. 7. 39.

cheiw

16.Ed.4.17 9.Ed.4.28, 19.H.6.31 6.H.7.1

chew it: but in that caſe hée may take his remedy by ſuerty of peace. And if there be an attempt made to maihem, wound, or beate a man, his wife, father, mother, or any of his children within age, or to diſſeiſe him of his land, or to diſpoſſeſſe him of his goodes, or to diſturbe him of his high way, or to turne an auncient watercourſe from his mill, he may lawfully vſe force to reſiſt it.

St. 15.R.2.2

34 As the law hath prouided by the before reherſed ſtatute of 15.R.2. that when any forcible entrie ſhall be made into any Benefices or Offices of the Church, a Juſtice of peace ſhall take the power of the county, and commit the offendors to the gaole: So hath it further deuiſed, that if there be debate betweene two perſons for one church, and one of them doth enter into the church with a great power of lay men, and holdeth out the other by force and armes, then he which is holden out, ſhall haue a writ of Vi laica remouenda directed to the ſherife, commanding him that he ſhal remoue the power which is within the church: and the ſherife ſhal be further commanded, that if he do find any that do reſiſt, he ſhall take with him the power of the county, and attach the bodies of all the reſiſters, and commit them to priſon, ſo that hée may haue their bodies before the King at a certaine day to anſwere for their contempt. But by this writ the Sherife ought not to remoue the Incumbent, who is in poſſeſſion of the Church, be he in poſſeſſion by right or wrong, but onely to remoue the force, and to ſuffer the Incumbent to enioy his poſſeſſion, for if hée do remoue the Incumbent, the ſame Incumbent ſhall haue a writ to the ſherife, to reſtore him to it againe.

The writ of Vi laica remouenda to remoue force.

Fitz.Na.B.55

Br. Force 20.

35 If the king doe bring a Quare impedit againſt the diſturber and the Incumbent, and the kings title is found for him, whereupon his clarke is inſtituted by writ, and after the firſt Incumbent doth enter by force, and great number of people, and doth take the profits, the kings Incumbent ſhall not haue the kings writ to the ſherife to remoue the force, for that when the iudgement giuen by the court is executed, the court hath no more power to deale in that cauſe. But if the defendant had diſturbed the Biſhop to admit the kings Incumbent, then he ſhould haue had ſuch a writ.

Where force ſhalbe remoued for the K. Incumbent, where not.

For-

Forgerie.

1 HAuing vndertaken to write of the great and generall maladies of the Realme, and the chiefe impediments of the iuſtice and peace of the kingdome, I ſhal not farre digreſſe from my theame, by treating of Forgery, Periurie, Maintenance, Deceit, Extortion and Oppreſſion, wherin though a man be not aſſaulted by the rapier and dagger, pikeſtaffe, or bilbow-blade, as he is in a fray, forcible entrie, or riot, yet a forged deed that conueyeth his land from him, a falſe oth which impriſoneth him of his leaſe, or vnlawful maintenance that wraſteth his credit or goods from him, do longer diſturb the peace of his mind, ſticke in his ſtomacke, and inflicteth a deeper and more durable impreſſion of ſorrow into his heart, than a boxe on the eare, a duſt in the necke, or a blow with a cudgell giuen on the ſodaine, will do: For the griefe of theſe later ſtripes is ſhort, and do weare out of mans mind by little and little, as his choler ceaſeth, and his hot blood coleth: but the diſcontent, & the wants which he receiueth of the former blowes, doe continue with him, and yeeld him moſt diſlike, when he is moſt patient, and beſt aduiſed. And therfore the wiſedome of this Realme hath from age to age taken great care by lawes and ſtatutes, to repreſſe them, and to inflict vpon the offendors in euery of them, penalties correſpondent to their deſerts. Our Lawes doe chaſtiſe thoſe that breake the peace by fraies, aſſaults, batteries, riots, or routs, with impriſonment of their bodies, vntil their hot bloods be cooled, and their diſtemperat humors be qualified: but they do impoſe ſharper and more durable puniſhments vpon ſuch as doe forge deeds, commit or procure periurie, or be maintainers of other mens ſuits or quarrels; accounting theſe laſt offences to tend more and for a longer time to the breach or blemiſh of the peace, or hinderance of the iuſtice of the Realme, than the former doe: As he that committeth forgerie in ſome caſes, ſhall be ſet on the pillorie, loſe his eares, haue his noſtrels ſlit, and pay to the party grieued his double coſts and dammages: And in ſome caſes, ſhalbe hanged as a felon: He that committeth periury, ſhall in ſome caſes be one yeare impriſoned, be ſet vpon the pillorie, and neuer after be allowed as a witneſſe: And he that maintaineth other mens ſuits, ſhall in ſome caſes be three yeares impriſoned, and further puniſhed at the kings pleaſure: And in ſome other caſes ſuſtaine other diſgraces. And therefore the preamble of the ſtatute of anno 1. H. 5. doth truely informe vs, that forged deedes doe trouble and change the lands of good people, intending to be in peace. And the ſtatute of anno 32. H. 8. doth teach vs, that the ſuborning of witnes for to maintaine any matter or cauſe, is to the diſturbance or hinderance of iuſtice.

Forgerie, periury, & maintenance do tend to the breach of the peace.

St. 1. H. 5. 3.

St. 32. H. 8. 9.

2 The

2 The forging of falſe ſealed Deeds, Euidences, or Writings, or of Court Rols, or of the will of any perſon, or of any Obligation, Bill obligatorie, Releaſe, or other diſcharge, or the pronouncing, publiſhing, or giuing in euidence of the ſame, whereby any perſon ſhalbe moleſted, troubled, charged, or defeated of his land, leaſe, annuitie, debt, accompt, action, ſuit, or demaund, is no leſſe perilous, and preiudicial to the party thereby wronged (if it be not diſcouered, preuented, or auoided) then the wreſting and euicting from him of the ſame land, leaſe, annuitie, debt, or demaund. And the offendors therein do as iniuriouſly, and with as ſmall colour of iuſtice, wreſt from the party grieued his ſaid land, leaſe, annuitie, debt, &c. as the robber doth take a purſe from the traueller by the way, or the burglarer his intended prey from the houſkeeper in the night. And if thoſe reall dueties or things in action, were conuerted into things perſonall, the vndue conueying of them in this vnlawfull manner, would deſerue to be accounted and puniſhed amongſt other felonies; as in ſome ſort it is ordained ſo to be by the ſtatute of anno 5. Eliz. And becauſe diuers perſons did forge falſe deeds and miniments, and did cauſe them to bee openly pronounced, publiſhed, and read, to trouble, change, or vndoe the lands of other perſons, & to vndoe and trouble the poſſeſſions and titles of the Kings people: therefore by a ſtatute made anno 1. H. 5. it was ordained, that the partie grieued therby, ſhall haue his ſuit in that caſe, and recouer his dammages, and the partie conuict ſhall make fine and ranſome at the Kings pleaſure. But foraſmuch as the wicked and daungerous practiſe of making, forging, and publiſhing of falſe and vntrue deeds and writings, was much more practiſed and put in vre, in all the parts of the Realme, than in times paſt it had beene, to the diſheriſon of diuers perſons, and the great ſubuerſion of iuſtice, which hath growne chiefely by that the paines and puniſhments limited for ſuch great offences, by the lawes and ſtatutes of this Realme, before time were ſo ſmall and eaſie, that ſuch euill people were not afraid to enterprize the practiſing and doing of ſuch offences: Therefore by a ſtatute made anno 5. El. it was enacted, That all other ſtatutes before that time made and prouided for forger of falſe deeds, charters, miniments, or writings, and all and euery penaltie appointed for the ſame, ſhould from the firſt day of June then next following, be void.

The enormity of Forgerie.

St. 5. El. 14.

St. 1. H. 5. 3.

St. 5. El. 14.

The repeale of former ſtatutes of Forgerie.

3 To the intent that condigne, or ſome harper puniſhment might bee ordained for ſuch as ſhould bee offendors in that crime of forgerie, than in time paſt had been, by the ſayd ſtatute of anno 5. Elizab. it was eſtabliſhed, That if any perſon or perſons after the firſt day of June then next following, vpon his or their owne head and imagination, or by falſe conſpiracie and fraud with others ſhall wittingly, ſubtilly, and falſly, forge, or make, or ſubtilly cauſe, or wittingly aſſent to bee forged or made, any falſe deed, charter, or writing ſealed, court rol, or the will of any perſon or perſons in writing, to the intent that the eſtate of Freehold or inheritance of any perſon or perſons, of, in, or to any lands, tenements, or hereditaments, freehold or copihold, or the right, title, or intereſt of any perſon or perſons, of, in, or to the ſame, or any of them, ſhall or may bee moleſted, troubled, defeated, recouered or charged: Or ſhall pronounce, publiſh, or ſhew forth in euidence, any ſuch falſe and forged deed, charter, writing, court roll, or will, as true, knowing the ſame to bee falſe and forged, as is aforeſaid, to the intent aboue remembred, and ſhall bee thereof conuicted, either vpon any action or actions of Forger of falſe deeds, to bee founded vpon this ſtatute, at the ſuit of the partie grieued, or otherwiſe according

St. 5. El. 14.

Forging of a deed, whereby anothers freehold ſhalbe troubled.

Publiſhing of a forged deed.

to the order and course of the lawes of this Realm, or vpon Bill or Information to be exhibited into the Court of Starr-chamber, according to the order and vse of the Court, he shal pay vnto the partie grieued his double costs & dammages, to bee found or assessed in the Court where such conuiction shall bee, & also shall be set vpon the Pillorie in some open market towne, or other open place, & there to haue both his eares cut off, and also his nostrels to be slit, and cut, and seared, so as they may remaine for a perpetuall note or marke of his falshood, and shall forfeit to the Queene her heires and successors, the whole issues and profits of his lands and tenements during his life, and shall suffer and haue perpetuall imprisonment during his life. The same dammages and costs to bee recouered at the suit of the party grieued, as is aforesaid, to bee first paied, and bee leuied of the goods and chattels of the offendors, and of the issues and profits of the said lands, tenements, and hereditaments of such partie conuicted, or of one or both of them, the sayd title of the Queene, her heires and successors to the same notwithstanding.

Forging a deed, whereby a lease or annuitie may bee claimed.

4 If any person or persons after the said first day of June next, vpon his or their owne imagination, or by false conspiracie, or fraud, had with any other, shall wittingly, subtilly, and falsly, forge or make, or wittingly, subtilly, or falsly, cause or assent to bee made and forged, any false Charter, Deed, or Writing, to the intent that any person or persons shall or may haue or clayme any estate or interest, for terme of yeares, of, in, or to any Mannours, Lands, Tenements, or Hereditaments (not being Copihold) or any Annuitie in Fee simple, Fee tayle, for terme of life, liues, or yeares: Or shall, as is aforesayd, forge, make, or cause or assent to bee made or forged any Obligation, or Bill obligatorie, or any Acquitance, Release, or other discharge of any Debt, Account, Action, Suit, Demaund, or other thing personall: Or shal pronounce, publish, or giue in euidence, such false or forged Charter, Deed, Writing, Obligation, or Bill obligatorie, or any Acquitance, Release, or discharge, as true, knowing the same to bee false and forged, and shall bee thereof conuict by any of the wayes or meanes aforesaid: Then hee shal pay to the partie grieued his double costs and dammages, to bee found and assessed in such Court where the saide conuiction shall bee had, and also shall bee set vpon the Pillorie in some open Market Towne, or other open place, and there haue one of his eares cut off, and also shal suffer imprisonment by the space of one whole yeare, without baile or mainprise. St.5.El.14.

Seuerall remedies for the partie grieued.

5 The partie and parties grieued by reason of any the offences aforesaide, shall and may at his and their pleasure haue and sue his action of forger of false deeds, vpon this Statute against any of the offendors in the same, by original writ out of the Chaunceric, and shall haue like Proces vpon the same, as in cases of trespas at the common law; Or may at his pleasure take his suite against any such offendors in any the premisses by Bill in the Kings Bench, or in the Exchequer: In which suites no Essoine, Iniunction, or Protection shall be allowed for the party Defendant. St.5.El.14.

Not twice impeached for one offence.

6 If the Defendant shall be conuict for any of the offences aforesaid, according to the order and forme aboue limited, and shall haue receiued thereupon punishment corporall according to this Act, then he shall not eftsoones be impeached for the same offence. St.5.El.14.

7 Although

St.5.El.14. 7 Although the partie or parties plaintife in any such Action, or Bill to bee sued as is aforesaid, shall after verdict past against the Defendant, or Defendants, happen to release or discharge the iudgement or execution vpon the same, or otherwise suffer the same to bee discontinued: yet nevertheless the same release, discharge, or discontinuance, shall extend only to discharge such costs and dammages as the same plaintife should haue had against the defendant: And the Iudges before whom the said action or suite shall be taken, shall and may proceede to iudgement of and vpon the residue of the said penalties, and forfaitures, and commaund execution vpon the same, the saide release discontinuance, or other discharge had, made, done, or suffered by the party plaintife in any wise notwithstanding. The plaintifs release shal only discharge his owne remedy.

St.5.El.14. 8 If any person or persons being hereafter conuicted, or condemned of any of the offences aforesaid, by any of the wayes or meanes above limited, shall after any such his or their conuiction or condemnation eftsoones commit or perpetrate any of the said offences in forme aforesaid: Then euery such second offence or offences shall be adiudged felony, & the parties being conuicted or attainted according to the lawes of this Realme, shall suffer paines of death, losse and forfaiture of their goods, cattels, lands, and Tenements, as in cases of felony by the cõmon lawes of this Realme ought to be lost or forfeited, without hauing any aduantage or benefit of Clergie or Sanctuarie: Hauing to euery person and persons, body politique and corporate, their heires & successors (other than ỳ said offendors, & such as claim to their vses) al such rights, titles, interests, possessions, liberties of distresses, leases, rents, reuersions, offices, & other profits & aduantages, which they or any of them shall haue at the time of such conuiction, or attainder, of, in, or to any the lands, tenements, or hereditaments of any such person, so as is aforesaid conuicted or attainted, or at any time before, in as large & ample manner, to all intents & purposes, as if this Act had neuer bin made. Prouided alwayes, that any such conuiction or attainder of felony as is aforesaid, or any forfaiture by reason of the same, shal not in any wise extend to take away the dower of the wife of any such person attainted, nor to the corruption of blod, or disherison of any the heire or heirs of any such person or persons so attainted: This Act or any thing therein contained, or any other statute, law, or customs notwithstanding. The punishment for the second offence. The right of others saued. No forfeiture of Dower or corruption of blod.

St.5.El.14. 9 All and euery Iustices of Oire & Determiner, & Iustices of Assise in their circuits, & euery of them shall haue full power & authority in euery of their open & generall Sessions, to inquire heare & determine of all & euery of the offences aforesaid, committed or don within the limits of their Commission & to make Proces for the execution of the same, as they may do against any person being indicted before them of Trespasse, or lawfully conuicted thereof. Iustices of Oire and Determiner and Iustices of Assise.

St.5.El.14. 10 If any person or persons whatsoeuer hath of his or their owne head, or by false conspiracie or fraud with any other, wittingly, subtilly, and falsly, forged or made, or shall before the first day of June next comming, forge and make any false deed, charter, or writing sealed, or the will of any person in writing, or any court roll, to the intent that the estate of Freehold or inheritance, or the right, title or interest of inheritance or freehold of any persons, of, in, or to any Manors, lands, & tenements, or hereditaments, being freehold or copihold: Or that by any such forged deed, charter, court roll, or writing, before the said first day of June, shall or may be molested, troubled, or defeated or a- Forging of deeds before the statute.

ny of the ſaid eſtates of any landes, tenements, or hereditaments being freehold or Copihold: Or if any perſon or perſons haue heretofore publiſhed or ſhewed forth in euidence, or before the ſaid firſt day of June ſhall publiſh or ſhew in euidence, for the proofe of any title, any falſe and forged deed, charter, writing, will, or Court Roll, as true, knowing the ſame to be falſe and forged as aforeſaid, to the intent aboue remembred, and ſhall be thereof attainted or conuicted according to the order of the law, either in an Action of forger of falſe faits, or in an Action vpon the caſe, at the ſuite of the party grieued, his heires, executors or aſſignes: Then the party ſo conuicted ſhall yelde and pay damages, and coſts of ſuite to the plaintife, as ſhall be aſſeſſed according to the law of the Realme, in any ſuch like Action or ſuite, and ſhall ſuffer impriſonment, & pay fine and ranſome at the pleaſure of the Quéene, her heirs or Succeſſors. And if any perſon or perſons ſhall after the ſaid firſt day of June next comming, pleade, publiſh, or ſhew forth in euidence, or otherwiſe for the proofe of any title, any falſe & forged deed, charter, writing, will, or Court Roll heretofore falſly made & forged, or to be falſly made & forged before the ſaid firſt day of June, as true, knowing the ſame to be falſe and forged, to the intent to haue or claime thereby any eſtate of inheritance, freehold, or leaſe of yeares, in, or to any mannors, lands, tenements, or hereditaments, or any annuitie, rent, or profit forth of any mannors, lands, tenements, or hereditaments: Or to the intent to alter, defeate, moleſt, trouble, charge, or recouer the eſtate of inheritance, freehold, or leaſe for yeares of any perſon, in any mannors, lands, tenements, rents, or hereditaments: Then euery perſon and perſons that ſo ſhall offend, & ſhal be thereof conuicted in forme firſt aboue remembred, ſhal pay vnto the partie grieued double coſts & dammages, and ſhall haue impriſonment, loſſe of Eares, ſlitting & ſearing of Noſe, and forfeiture of lands in the ſame manner and forme as aboue is limited for any perſon that ſhall offend by forging or publiſhing of any falſe deed, or writing, as aforeſaid, after the ſaid firſt day of June.

Pleading a forged deed made before the ſtatute.

Perſons not chargeable by this ſtatute.

11 This Act or any thing therein contained, ſhall not extend to charge any Ordinarie, or any their Commiſſaries, Officials, Regiſters, or any other their Officers, or Miniſters, with any the offences aforeſaid, for putting their ſeale of office to any will to be exhibited vnto them, not knowing the ſame to be falſe or forged: or for writing of the ſaid will, or probate of the ſame. Neither ſhall this Act or any thing therein contained, extend or be hurtfull to any Proctor, Aduocate, or Regiſter of any Eccleſiaſticall Court within this realm, for the writing, ſetting forth, or pleading of any Plorie made according to the Eccleſiaſticall lawes or cuſtomes heretofore allowed and vſed by the Eccleſiaſticall Courts of this Realm, for the apparance of any perſon or perſons, being cited to appeare in any of the ſaid Courts Eccleſiaſticall: Nor to any Archdeacon, or Official, for putting their authētique ſeale to the ſaid plories, or plorie: Nor yet to any Iudge Eccleſiaſticall, for admitting of the ſame: but they and euerie of them may hereafter do in all points concerning the ſame, as they and euerie of them might lawfully haue done before the making of this Act. Neither ſhall this Act extend to any Attourney, Lawyer, or Councellor, that ſhall for his client plead, ſhew forth, or giue in euidence, any falſe and forged deed, charter, will, court roll, or other writing, for true, being not partie nor priuie to the forging of the ſame, for the pleading, ſhewing forth or giuing in euidence of the ſame. Neither ſhall this Act extend to any perſon or perſons, that ſhall plead or ſhew forth any deed or writing exemplified vnder the great Seale of England

5. El. 14.

Officiall.

Attourney. Counſellor.

Exemplification.

England, or vnder the great seale of any other authentique Court of this Realme. Nor shall extend to any Iudge or Iustice, or other person that shall cause any seale of any Court to bee set to any such deed, charter, or writing inrolled, not knowing the same to be false & forged: Any thing in this Act to the contrarie notwithstanding. A Iudge. A Iustice.

25.El.Dy.322 12 If one or more tenants of a Manno, wherein there bee seuerall Copiholders, do make a customarie booke or rol of the same Manno, in parchment, or paper, & do insert therein diuers customs, whereof some be false, & do set his or their owne seales thereunto, & the seales of some other Copiholders of the same Manno, & the same customarie booke or roll is intituled & pretended to be collected, renewed, set forth & allowed by the Lord, & all the Freeholders and Copiholders of the said Manno, where in truth it is set forth & made without the priuitie or consent of the Lord of the same Manno or of the residue of the Copiholders thereof: This is a forgerie, & false making of a writing sealed, to the intent to benefit themselues, & to disinherit the Lord of the Manno, and therefore punishable by the open and shamefull punishment contained in the foresaid Statute of 5. Eliz. Forging of a customarie booke.

25.El.Dy.323 13 Whereas the sayd Stat of 5. Eliz. hath ordained, That if any person shall bee conuicted of forging of a false deed vpon a bill, or information to be exhibited into the Court of the Star-chamber, according to the order & vse of the Court, he shall pay vnto the partie grieued his double costs & dammages, to be assessed in the same Court: Therefore when any man is attainted of Forgery in the Star-chamber, for the recouerie of the double costs & damages tared by the Court, a writ in English shall be made, and directed to the Shirife of the Countie where the offendor doth dwell, reciting the Statute & the conuiction, commanding the Shirife to leuie the said costs & dammages of the goods, cattels, and profits of the lands & tenements of the offendor, & to bring the money into the Star-chamber: Which writ shal be sealed with the great Seale, & vnder the Teste of the K. And there by the order of the Court the money shall bee deliuered to the partie grieued. The proces to leuie costs and damages of a forger.

25.El.Dy.323 Co. l. 5.30. 14 If a man be attainted of Forgerie in the Star-chamber, or in an action of Forger of false deeds, founded vpon the said stat of 5. Eliz. the K. may pardon his corporall punishment of setting vpon the pillorie, slitting his nostrels, & perpetuall imprisonment, viz. so much of the penaltie of the said statute, as is to be inflicted for a terrour or example to his people, for that he only hath interest therein, as he hath in the issues & profits of the said offendors lands. And as he may pardon the second offence of him, who being once conuicted of forgerie, doth afterwards commit the same againe, & thereby doth become a felon: And as the plaintifes release, discharge, or discontinuance, by the words of the said stat, shall discharge the defendants iudgement or execution touching such costs & damages, as the plaintife should haue had against the defendant: So may the K. pardon discharge the same defendant of any penaltie or forfeiture, that the same statute doth giue vnto him, which be the corporal punishments, & the issues & profits of the defendants lands. The Kings pardon of forgerie.

23.El.Dy 302 15 Whereas the said Stat of 5. Eliz. hath ordained, That if any shal forge the will of any person in writing, to the intent &c. That then he shal be punished as is aforesaid: Yet if one do forge the Testament of another person, wher- Forging of a Testament.

by any leaſe for yeares ſhall bee conueyed, he is within the danger & penaltie of the ſaid ſtat. though no mention be made in the ſtat. of a Teſtament, and he ſhall be charged only in reſpect that he hath forged a writing ſealed. But of a will concerning freehold, or inheritance, there is ſpeciall mention made in the ſame ſtatute.

Inſerting more in a will than is directed.

16 If a Clerke do write the will of another man which is deadly ſicke and (after the Teſtator is become ſpeechleſſe, and paſt memorie) doth inſert ſome article or clauſe in the ſame will, which the Teſtator did not direct him to doe, yet this is no forgerie puniſhable by the ſaid ſtat. of 5. El. nor within the meaning of the makers of the ſame: For the principall deed or writing, which was the will of the Teſtator, was not forged, neither was any falſe deede, charter, writing, or wil, though the article or clauſe inſerted therein, having no ſufficient warrant, was falſe, and therefore not the Teſtators will, nor part thereof, nor to be proued therewith. 12. Eliz. Dyer 288.

17 And though the ſaid ſtat. of 5. El. doth repeale as well the before mentioned ſtat. of 1. H. 5. & all other ſtatutes before that time made & prouided for forging of falſe deeds, & hath ordained a new action of forger of falſe deedes, to bee founded vpon that Stat. and other new remedies, yet ſeeing both thoſe ſtatutes were made & prouided to one end, viz. to auoid & puniſh the enormities of forgerie of falſe deeds, to the diſheriſon or hurt of others, though vpon ſeuerall penalties: Notwithſtanding in ſome caſes the like reaſon, & ſo the ſame lawe is to be retained in the ſaid ſtat. of 5. Eliz. which was before the firſt mentioned ſtat. of 1. H. 5. As in an actiõ of forger of falſe deeds, brought vpon the ſayd ſtatute of 1. H. 5. it is a good plea in barre, for the defendant to plead not guilty, or that he did not forge that deed, or to plead, that he gaue to the plaintif a gallon of wine in ſatisfaction of the ſaid offence, which he did accept. And ſo it is a good plea in barre, in an action of forger of falſe deedes, brought vpon the ſtat. of 5. Eliz. & the ſame plea being confeſſed by the plaintife, or found by verdict, ſhall not only barre the plaintife of the recouerie of his double coſts & dammages, but ſhall alſo diſcharge the defendant of all corporall puniſhments to bee inflicted, & of the forfeiture of the iſſues and profits of his land to the King. For this is not a releaſe or diſcharge after verdict, but a diſcharge before verdict, whereby the whole Action and ſute is diſcharged, & ſo not within the compaſſe of the ſaid ſtat. of 5. El. 14. touching the pties releaſe or diſcharge after verdict. Lib. in. f. 359.

Pleas in bar of forgerie.

9. H. 6. 26. 20. H. 6. 11. 19. H. 6. 29. 21. H. 7. 1. 37. H. 6. 37.

18 There bee ſome caſes where a man ſhal haue an Action of forger of falſe deeds, though hee hath neither poſſeſſion, reuerſion, or remainder, but only a title to the land. As if a man die ſeiſed of certaine land, and a ſtranger doth abate, and enter vpon the ſame land before the entrie of the heire, and holdeth out the heire, and after the ſame ſtator doth forge ſome charter, deed, or other writing ſealed of the ſame land, to the intent to diſturbe, trouble, or defeate the eſtate of the heire in the ſame, in this caſe the heire may haue an Action of forger of falſe deeds againſt the ſame ſtranger, though he hath then no poſſeſſion, reuerſion, or remainder in the ſame land. And ſo it is, if one man doe diſſeiſe another man of land, and after doth forge falſe deedes &c. of the ſame land, to the intent aforeſayd, the diſſeiſee may maintaine an action of forger of falſe deeds againſt the diſſeiſor vpon the Statute of 5. Elizab. as he might haue done before vpon the Statute of 1. H. 5. for that his right and title to the ſame land is moleſted, troubled, defeated, recouered, or charged by the ſame forged deed.

where one ſhall haue an Action of forgerie, though he hath but a right to the land.

4. H. 6. 25. 22 H. 6. 15. 15. Ed. 4. 24.

9.Ed.4.37. deed. And the ſame law is, if a man do bring a reall Action againſt an other of certaine land, & before iudgement one claiming a leaſe for the terme of yeares of the ſame land, praieth to be receiued to ſaue his terme according to the ſtat. 21.6,Ed.1.11 of Glouceſter, & doth ſhew his ſaid leaſe, which leaſe is forged: In this caſe the Demãdant in the ſaid action may haue a writ of Forger of falſe deeds, againſt him that claimeth the ſaid terme, though he hath as yet nothing in poſſeſſion, reuerſion, or remainder in the ſame land, but only a right, for this leaſe is forged to the intent to defeat him of his right, viz. of his preſent poſſeſſion.

19 If a man hath neither poſſeſſion, reuerſion, remainder, or title, of, in, or to land, & yet will bring againſt another an Action of forger of falſe deeds of the ſame land, it is a good plea in barre for the defendant to plead, that he himſelfe 21.H.6.51. is ſeiſed of the ſame land, without that the plaintife hath any thing therin: for 8.H.6.34. if the plaintife hath nothing in the freehold, or inheritance of the land, nor any eſtate for yeares, copihold or annuity in the ſame, then he cannot be the party grieued in that Action, neither his right, title, or intereſt, of, in, or to the ſame can be moleſted, troubled, or defeated, recouered or charged. And the ſame law is, if a man hath in land no mediate or immediate eſtate expectant vpon any leaſe or leaſes for life, liues, or yeares, nor profit, right of entry, but only a poſſi- 33.H.6.22. bility: As if A. doe giue land to B. & the heires of his body lawfully begotten, the remainder thereof to C. & his heires for euer: If C. do forge a deed containing that A. gaue the ſame land to the ſaid B. & the heirs of his body lawfully begotten, the remainder thereof to him the ſaid C. and his heires for euer: In this caſe C. cannot purſue an Action of forger of falſe deeds againſt C. during the liues of B. or any of the heires of his body lawfully begotten for the ſaide forgery, ſeeing that during the ſaid time, his right, title, or intereſt vnto that land is not moleſted, troubled, defeated, recouered, or charged, for that he hath therein during that time but onely a poſſibilitie, which poſſibilitie it may be ſhall neuer come into Eſſe. And further, C. cannot for the ſaid forgery recouer double coſts and dammages according to the ſaid Stat. of 5.El. for that he is not as yet a party grieued, nor damnified, nor hath ſuſtained any damages, neither peraduenture euer ſhall, if B. and his heires do continue from one generation to another, and not die, without iſſue of their bodies, &c. And of a bare poſſibilitie no value can be made, neither ſingle or double dammages aſſeſſed.

where no Title no Action of forgerie.

No Action in reſpect of a poſſibilitie.

18.H.6.5. 9.H.6.26. Kel.fol.114. 20 If there be two Ioyntenants, or tenants in common of land, and a ſtranger doth forge a deede concerning the ſame land: if one of thoſe Ioyntenants, or tenants in common doe bring an Action of forger of falſe deeds againſt the offendor, and the Defendant doe pleade that another hath an eſtate in Ioyntenancie, or in common with the plaintife who is in full life, this writ ſhall abate: for ſeeing this Action is but in the nature of an Action of Treſpas, wherein the plaintifes are onely to recouer dammages, Ioyntenants and tenants in common muſt ioyne in the ſame Action, for though their right in the land bee ſeuerall, yet their poſſeſſion touching the profit thereof is ioynt. And this Action is founded vpon the poſſeſſion. And whereas both the Statute of 1.H.5. and 5.Eliz. doe ordaine that the partie and parties grieued, ſhall and may at his and their pleaſure, haue and ſue this Action of forger of falſe deedes, in this caſe both the Ioyntenants and tenants in common be the parties grie- Fitz.Forgef 5. ued, for that their land is moleſted, troubled, recouered or charged by this forged deed. But if there be two Ioyntenants or tenants in common of certeine land,

Forging of a deed touching ioyntenants land.

land, and none of them doth forge a false Release, or other Deede, whereby the whole land is intended to be conueied to himselfe, in this case the other Ioyntenant or &c. may haue an Action of forger of false deeds against his said ioyntenant or &c. for that forged and false deede was made, to the intent that the right or title of the forgers companion in estate should be molested, troubled, defeated, or recouered. And in this case he is the party grieued, to whose onely disherison the said forgery doth trench.

One sealeth a deed by another's commandement.

21 In an Action of forger of false deedes, the Defendant pleaded that the Plaintife being seised of certain land, did couenant with a stranger to enfeoffe him of the same land, whereupon the same stranger came to the defendant being a Clerke, & requested him to make a deed of feoffment of the same land, which he did: & after by the plaintifs commandement he sealed the same deed, & after did reade the deed at the time of the liuerie and seisin, which is the same forgerie, & proclamation: & that was adiudged a good Plea: for when the defendant sealed the feoffement by the plaintifes commaundement, & in his presence, it was the plaintifes owne act & deed, & his owne sealing, & not the defendants: for the plaintife did vse the defendants hand but as his instrument therein, as men vnlearned do vse an other mans hand to help or direct them, to subcribe their names to a Deede. 21.H.6.4.

One forgeth and another doth publish.

22 If the father do forge a deede, & after dieth, & then his sonne doth find the same deed, & doth pronounce, publish, or shew forth in euidence the same deede, knowing the same to be false & forged, to the intent the estate of freehold or inheritance of any person at, in, or to any lands, &c. should be molested, troubled, defeated, or recouered: this is forgerie in the son, & he shall be punished according to the foresaid Stat. of 5. El. And the same law is if one man do forge a deed, or &c. & an other man knowing therof shal publish it, to any of the intents aforesaid: this is forgerie prohibited by the same stat: for the same stat. of 5. El. is in the disiunctiue, viz. if any person shall forge or publish. 9.H.6.26. 7.H.6.38.

Forgerie by antedating of a deed.

23 If a man do make a feoffment to one person of certaine land, & doth deliuer possession thereof accordingly, & after he doth make a feoffement to another person of the same land, bearing date before the first feoffement, but doth not deliuer it, this last feoffment is not the feoffors deed: But yet if he do publish it to be his deede, the first feoffee may haue an action of forger of false deeds against him: for when he had made the first feoffement of the land, he then had nothing left in him of the same land. And therefore when he made the second antedated deed of that land, it was a false & forged deed, and then after publishing, pronouncing, or shewing it forth to be his deede, it was with intent to molest, trouble, defeat, recouer, or charge the land of the first & lawful feoffee, & so he is punishable according to the foresaid stat of 5. Eliz. as he was before by the stat. of 1. H. 5. 27.H.6.3.

24 Though the foresaid two statutes of 1. H. 5. and 5. Eliz. were ordained to punish those who should forge any false deed, or &c. to the intent to molest, trouble, charge, or recouer the right or title of any person in his lands, tenements, or hereditaments, or to the intent that any person should claime any lease for yeares, or annuitie, or should forge any Obligation, Bill obligatorie, Release, Acquitance, or other discharge of any debt, account, action, suit, demaund, or other thing personall: yet was their no prouision in either of them

to

to punish those who should get into their hands any mony, goods, cattels, iewels, or things of any other persons, by colour of a false token, or forged or counterfeit letter: for the redresse whereof by a statute made Ann 33. H. 8. it was enacted, That if any person or persons, of what estate or degree soeuer he or they be, shal falsely & deceitfully obtaine or get into his or their hands or possession, any money, goods, cattels, iewels, or other things, of any other person or persons, by colour or meanes of any false token, or counterfeit letter, made in another mans name, that then euerie such person & persons so offending, & being therof lawfully conuict by witnesses taken before the L. Chancellor of England for ỳ time being, or by examinatiõ of witnesses, or confession take in the Starchamber before the R. honorable Coũcel, or before the Iust. of Assise in their circuits for the time being, or before the Iust. of peace within any part of the R. dominions, in their generall Sessions, or by action in any of the R. courts of record, shal haue & suffer such correction, & punishmẽt by imprisonment of his body, setting vpõ the pillory or otherwise, by any corporal pain (except pain of death) as shalbe vnto him or thẽ limited, adiudged, or appointed by the person & persons before whom he shalbe so conuicted of the said offences, or any of them.

St. 33. H. 8. 1. Getting of other mens goods by counterfeit tokens or letters.

25 As wel the Iust. of Assise for the time being, as also ỳ. Iust. of peace in euery county, whereof one to be of the Quorũ, shall haue power & authoritie to call & conuent by proces, & otherwise, to the said Assises or generall sessions any person or persons, being suspected of any of the aforesaid offences, & to commit him or them to ward, or to let him or them to baile vntill the nert Assises or generall sessiõs, there to be examined, & further to be ordered by their discretions, as is abouesaid: Prouided alwaies, that the Iust. of peace within euerie Citie, Borough, Towne, & Franchise within this Realm, or other the R. dominions, shall haue like iurisdiction, power & authoritie, at their generall Sessions, & otherwise, to do & execute all & euerie thing & things in all points, as other Iust. of Assise in their circuits, or Iustices of peace in the Coũties, by vertue of this Act be limited & appointed to do & execute for the punishmẽt & correction of like offendors, as beforesaid is limited. Sauing to the party grieued by such deceit, such remedie, by way of action, or otherwise, of & for the same money, goods, cattels, iewels, or other things so obtained, as he might haue had, if this act had neuer bin made: Any thing in this Act &c. notwithstanding.

St. 33. H. 8. 1. Suspected persons called before the Iustices.

The remedie of the partie grieued.

26 Forgerie of writings hath bene alwaies so hatefull in this realme, that our law-makers haue pursued ỳ practisers therof with sharpe & bitter punishmẽt, though in some cases ỳ same was not put in vse to molest or euict any man of his land, lease, annuitie, debt, account, action, suit, or other demaund, nor to get into his hands any others goods, cattels, or iewels, but only to escape the ordinance & censure of the Law: As by a statute made Ann 5. Eliz. it is established, That no person retained in husbandry, or in certaine inferior arts or faculties (in the said statute mentioned) shall depart out of one citie, towne, or parish, into another, nor out of the Lathe, Rape, Wapentake, or Hundred, nor out of the County or Shire where he last serued, to serue in another Citie, Towne, &c. vnlesse he haue a Testimoniall of the said Citie or towne corporat from whence he departed, or of the Constable or other officer, &c. And if any person shall be taken with any counterfeit or forged testimonial, then he shalbe whipped as a vagabond.

St. 5. El. 7.

Forging of a testimoniall.

Per-

Periurie, Subornation of witnesses.

Truth tried by the othes of men.

1 THe Law of the Realme desirous to trie out truth in all causes called in question before her, to the end she might proceed in iudgement, and execute iustice accordingly, hath in all ages prooued it to bee the best meanes to search out this truth by the othes of honest, lawful, and indifferent persons: intending that the man who doth professe God to bee his Creator, Redeemer, and Sanctifier, and hopeth to be saued by his blood, when he doth come in the presence of that God, and his people, and doth aduisely sweare, that he will declare the trueth, according to his knowledge, in that matter in question, as God shal help him: (which is to say, as he will expect the blessing of God in this life, and eternall saluation in the life to come) is void of all partiality and priuat affection, in all respects to be credited, and will tell the whole truth, and nothing but the truth.

The credite of an othe.

And therefore an othe is aptly termed Sacramentum, a holy band, or sacred tie, or godly vow: some do call it firmamẽtum veritatis, the foundation & ground of truth; and some other vinculum pacis, a meane of the knot or lincke of peace. And if it be taken and found by a whole Jury, consisting vpon twelue persons or aboue, it is called veredictum, viz. a presentment of truth. And others do hold it a ceremonie instituted by God, wherein himselfe is a partie, and therefore he will see it verified, or sharply punished. We know, that the proofe of most of our acts, deeds, and writings, do depend vpon the othes of others, and whatsoeuer men do for their owne particuler account most certaine, is altogether in most cases vncertaine, vnlesse it may be iustified by the othes of others. As if one do commit murder, rape, burglarie, robberie, or other offence whatsoeuer, and if it be denied and cannot bee prooued by othe of some other, the offendor shall escape vnpunished for it. And likewise if a man do buy land of another, if the feoffor doe make him a deed of feoffement thereof, do seale and deliuer it, and giue him possession, and after will denie it, vnlesse it can be prooued by the othe of some other, the feoffee shall lose his land and money. And so it is of leases, annuities, releases, acquitances, obligations, bargaines, contracts, couenants, promises, offences, entries, disseisins, and other matters in fait, if they be denied, trauersed, and called in question, the proof and validitie of them doth depend wholly vpon the othes and testimonie of others. And there is no case so plaine, which commeth in question betweene partie and partie, but one of

of the parties to the ſute may pleade ſuch a plea as ſhall come to be tried by the othes of others.

What ſorts of perſons are to be depoſed.

2 Therefore as the Lawe doth reuerently reſpect the othes of men, taketh her intelligence of matters in fact from them, doth cleaue & leane vnto them, & giueth ſuch credite & approbation vnto them, that ſhe doth found & build her iudgemẽts in moſt caſes of greateſt importance vpon them: So ſhe retaineth a vigilant & carefull eye, that thoſe othes be taken by men of ſincerities of life, & maturitie of iudgement, perſons not ſtained with Periury or other greeuous or foule offences, men indifferently affected, & ſuch as will in ſwearing reſpect the trueth of their knowledge, & not the face of the perſon: for if ſhe eſpie any of thoſe defects in him, ſhe doth either wholy reiect his othe, or elſe ſhe giueth little or no credite vnto it, & further inflicteth condigne puniſhment vpon him, according to his deſert.

Mag. Char. 9. H. 3. 29.

3 And becauſe the King himſelfe at his Coronation is ſworne, that iuſtice ſhall be ſolde, deferred, or denied to no man: nor that any man ſhall be condemned but by lawful triall: and euery of his Iudges be ſworne, that he ſhall doe equall Lawe and execution of iuſtice to all the Kings Subiects,

Sta. 18. Ed. 3.

rich and poore, without hauing regard to any perſon: Therefore the law hath deuiſed that thoſe Iudges before whom any cauſe is called in queſtion, and is brought to an iſſue, ſhall be informed of the truth of that iſſue, by the othes and verdict of twelue Iurors, who are impanelled, returned, and ſworne to trie that iſſue, to the end the ſame Iudges may ground their iudgement thereupon, and ſo doe equall iuſtice to the parties, according to their oathes: and alſo that the ſaide Iurors ſhall be aſcertained of the veritie of the fact, by the Othes of witneſſes, or other euidences, that they may giue their verdict thereupon, according to their Othes. And ſeing thoſe Iurors being the greateſt number of perſons that be vſually ſworne, for the furtherance and execution of iuſtice, be returned by the Shiriffe of the Countie where the cauſe dependeth in queſtion, his vnderſhirife, or the Baylife of ſome Libertie, or for ſome default in them, by the Coroners: Therefore the Lawe hath further ordained, that the ſaid Shiriffe, Vnderſhiriffe, or &c. ſhall be indifferent perſons of themſelues, and alſo deale vprightly in returning of thoſe Iurors, leſt by their partialitie, Truth may be concealed, Periurie committed, and ſo iuſtice ſubuerted. And for that cauſe the prouidence of the Lawe doth not allow that Shiriffe, Vnderſhiriffe, Bailiffe of Franchiſe, Coroner, or other perſon as indifferent, or meete to impannell a Iurie, who is a partie to the ſute or matter in queſtion: or who doth maintaine either of the parties plaintife, or defendant in the ſame ſute: or is of councell with either of them in that ſute then in iſſue: Nor who is within the diſtreſſe, receiueth the yerely fee, or weareth the liuerie or robe of any of the parties to that ſute: Nor who is of kinred by nature, or of affinitie by marriage, to any of the parties to that ſute: Nor who doth returne that Enqueſt, or any of the Iurors therein, at the denomination, or by the procurement of any of the parties to the ſame ſute, or of any other perſon whatſoeuer: Nor who doth impannell that Enqueſt, or any of the Iurors therein, for the fauour which he doth beare more to the one partie than to the other: Nor who was an Arbitrator in that cauſe in queſtion, and to be in triall, and did treate and conferre of the ſame: Nor who is then in ſute of lawe with either of the parties to this queſtion or triall, for any matter of treſpaſſe, malice, or euill will: Nor who did bap-

All the parties to the execution of iuſtice ſworne.

Fitz. Challege 111. 7. Ed. 4. 56. 33. Aſſ. p. 12. 12. Aſſ. pl. 1. 26. Aſſ. p. 56. 12. Aſſ p 36. 44. Aſſ. p. 18. Plo. Com. fol. 425. 29. Aſſ. p. 2. 28. Aſſ. p. 28. 7. H. 4. 10. Fitz. Challeng. 94. 99. 8. H. 5. 5. 20. H. 6. 39. 11. H. 4. 26. 38. H. 6. 6. 24. Ed. 3. 7

Cauſes of ſuſpition in Shiriffes in impannelling of Iuries.

tize

tize the child of any of the parties to this ſute and triall, or any of the parties to the ſame ſute did baptize his childe. All which the Lawe doth ſuſpect as cauſes of fauor and affection in the Shiriffe, his Vnderſhiriffe, &c. and to bee meuers, fauourers or conſentors to Periurie, and therefore vpon challenge of the Array ſo being impannelled, and the ſame proued, the whole Array ſhal be quaſhed. 4.Ed.4.11.

4 As the Lawe hath great care that Shiriffes, Vnderſhiriffes, Bayliffes of Liberties, Coroners, and all others hauing authoritie to returne enqueſts ſhould therein be voide of all partiality, or preſumption or cauſe thereof, to the intent that a gappe ſhould not be left open by their meanes, to thoſe that be willing to enter into corruption of conſcience, and ſo to commit Periurie: In like ſort hath ſhee vigilantly foreſeene, that thoſe Iurors which be returned by the ſaid Shiriffes, &c. may bee ſo ſifted, tried, and examined, that they may be found in all reſpects Probi & legales homines, viz. honeſt, vpright, and lawfull men in the eie and iudgement of the Lawe, and that none of them be an Alien, a villaine, or outlawe, an excommunicate perſon, and thereby not legalis homo, nor conuicted in a Writ of Conſpiracie, or an Attaint, and by that meanes not probus homo, and ſo to be challenged in euery cauſe, and by euery perſon: and further, that they may be proued to bee men of indifferencie, and voide of all partialitie, and ſuch as will wholy reſpect the trueth of the cauſe in queſtion, and in their verdict nothing regarde any that is partie thereunto. And therefore if there be any lawfull cauſe to feare particular fauour and affection in any of the Iurors, and that hee will rather incline to Periurie, than giue eare to the trueth of the cauſe, the Law doth allow to the partie grieued, or ſuſpecting the ſame, ſeuerall Challenges to the ſame Iuror, and thereby to haue him drawne and remoued out of that Enqueſt.

Euery Iuror muſt be an honeſt & lawfull man. 3°.H.6.55. 26.Aſſ.p.28. 14 H.4.19 9 Ed.4.16. 11.H.4.4.

Challenges of Iurors ſuſpected.

5 As if a man be a witneſſe in a cauſe in queſtion, he can not be a Iuror in the ſame cauſe, for the witnes doth teſtifie vpon his certaine knowledge, & the Iurors of an Enqueſt muſt giue their verdict according to their euidence. And beſides, he that produceth a witneſſe, expecteth at his hand a fauourable deliuery of his euidēce, or otherwiſe he would not produce him, which fauor euery Iuror muſt be wholy voide of, if he will auoide Periurie.

I witneſſe. 23.Aſſ.p.11. 12.Aſſ.p.12. 11.Aſſ.p.19.

Periurie ſuſpected by deliuering his verdict before hand.

6 If a Iuror after he is returned, & before he is ſworne, will ſay that he will paſſe for the plaintife, or defendant, & doth ſpeake it for the fauor which he beareth to the one party, or the hatred which he hath to the other, (& not in reſpect of his owne knowledge of the trueth of the cauſe) the Law doth feare periurie in him, & therefore ſhee will remoue him out of that enqueſt, if he be challenged therefore. 20.H.6.39. 2.Ed.3 69.

Periurie ſuſpected by eating at the charge of one of the parties.

7 If one that is impannelled of a Iurie doth goe to the Aſſiſes with one of the parties to the iſſue, & doth eate & drinke with him at his charges, the Lawe doth ſuſpect the ſame Iuror of partialitie, & ſo of inclination to Periury, in recompence of that kindnes receiued, & therefore ſhe will remoue him out of that Enqueſt if he be challenged therefore. 8.Ed.3.69. 13.H.4 13. Fitz. Challenge 177.

8 If two men be in queſtion for any cauſe, and then do refer the matter in debate to be heard & ended by two Arbitrators, whereof the one doth make choiſe

choice of one Arbitrator, and the other of another, which Arbitrators do méete together, and conferre of the cauſe, but doe not agrée, whereupon the partie grieued doth proſecute the ſaid ſuite to an iſſue, and one of the ſame Arbitrators is returned of that Enqueſt, the law doth ſuſpect the ſame Iuror of partialitie, and ſo of inclination to Periurie, and therefore ſhée will remoue him out of that Enqueſt, if he be challenged therefore; for when he was choſen by one of the parties alone, this election maketh him in a ſort of counſel with him that did chooſe him, and ſo fauorable vnto him, but if hée had béene choſen by
3.H.6.25 the conſent of both the parties together, the law would haue made other conſtruction of him, and adiudged him indifferent.

34.Aſſ.p.6 9 If two men doe combine themſelues by oath, bond, couenant, or faithfull and aduiſed promiſe, that one of them will take an others part, be his friend, and aſſiſt him in all cauſes whatſoeuer: And after there is a ſuite commenced betwéene one of thoſe parties and a ſtranger, and they come to iſſue, and the other party who made the ſame combination is returned vpon the enqueſt to trie the matter in iſſue betwéene his companion and that ſtranger, the law doth ſuſpect him of fauour and periury, and ſo will reiect him, if hée be challenged therefore: for ſhée doth feare that his olde friendſhip and former league with the partie to that iſſue hath ſuncke déepely into his breaſt, and will further preuaile with him, then the trueth of a ſtrangers caſe to be preſently examined and tried will doe, be it neuer ſo apparent.

Periury ſuſpected by combination.

Fitz.Chal.109 10 If two men be at controuerſie, and in ſuit of law, and depending that ſuit, there is an other controuerſie, and ſuit in law commenced betwéene one of thoſe parties and a ſtranger, and they diſcend to an iſſue, and the other party to the firſt ſuit is returned one of that Enqueſt: In this caſe the law doth
8.H.5.11 ſuſpect him of malice, and will remoue him out of that enqueſt, if he be challenged therefore by his former aduerſary: for ſhe doth feare that the grudge which he hath conceiued in his heart againſt his aduerſarie vpon the firſt ſuite, will moue him to reuenge, which is one of the grounds and cauſes of periurie.

Periury ſuſpected if one of the parties & a Iuror be at ſuit in law.

8.H.4.3 11 If two perſons or more doe conſpire and agrée betwéene themſelues to
27.Aſſ.pl.13 indite an other of Felony, and accordingly they doe procure him to be indited of the ſame felony, of which felony vpon his arraignement he is acquit; if the party indited doe bring a writ of Conſpiracie againſt the ſaid conſpirators, and they doe come to an iſſue to be tried by a Iury, if any of thoſe who were the Inditors of the ſame perſon be returned vpon the enqueſt to trie the conſpiracie, the law will ſuſpect him of partiality, and not admit him to be ſworne to try the conſpiracy, for feare of periury: for ſhée conceiueth that hée will doe his indeuor to iuſtifie and maintaine that which before he had found vpon the inditement, though it be falſe, for the ſauing of his owne credit. And the like law is, if a man be one of thoſe who doe indite an other of Felonie; and after when the party indited hath pleaded not guilty, and doth ſubmit himſelfe to
7.Ed.4.4 be tried by the Countrey, the ſame Inditor is returned vpon the enqueſt, to
12.Aſſ.pal.36 try the innocencie or guilt of the man, vpon the challenge of him by the party indited, he ſhall be remoued: for the law will ſuſpect him of periury, and that he will rather reſpect his owne credit, and iuſtifie his former oath and the inditement to be true, than regard his euidence, the life of the man arraigned, and the truth of the caſe in triall. And it is ſpecially prouided by the Statute
Sta.25.E.3.3 of Anno 25.Ed.3. That no Inditor ſhall be put in enqueſts vpon the deline-

Periury ſuſpected for that the Iuror paſſed againſt him before.

rance of the Inditées, if hée be challenged for the ſame cauſe by him which is indited.

Periury ſuſpected in reſpect of Subiection or gouernement.

12 And the Law doth ſuſpect one that is returned of a Iurie of partialitie and fauour, who is within the diſtreſſe of either of the parties to that ſuit, or that is within the Iuriſdiction of the Court Hundred, or Court Léete of the plaintife or defendant, or of any other, in whoſe right, to whoſe vſe, or, by whoſe commaundement either of them doe claime: for if hée hath any land in his owne right, or his wiues, or that any other is ſeiſed to the vſe of him or his wife of any land whereof hée taketh the profit, which is holden mediately or immediately of either of the parties to that ſute, the Lawe doth ſuſpect him of Periurie, and being challenged therefore, he ſhalbe drawne, and not ſworne of that Enqueſt. And ſo it is if any of the perſons returned to be of a Iury be ſeruant to either of the parties to that Iſſue, the Law doth ſuſpect him of periury, for that he is at the commandement, and vnder the correction of his Maſter, and therefore being challenged, he ſhall be drawn out of that Iury. And the like Law is if either of the parties to the ſuite, be ſeruant to any of the Iurie, and that Iuror be challenged therefore, he ſhall not be ſworne for feare of periury, which he may commit for his ſeruants benefit. Fitz. Challenge 19. 27. 44 61. 4 H. 6, 25. 44. Ed. 3. 5. 38 Ed. 3. 25. 22. Ed. 4. 1. 2. H. 4 13.

Periurie ſuſpected in reſpect of kinred, aliance, or profite.

13 The Lawe doth alſo perceiue, that Nature and priuate profite be oft times ſpeciall motions to partialitie, fauour, and periury. As if any perſon be returned of a Iury, who is néere of kinred or affinity to either of the parties to that ſuit, or to his wife, viz. within the degrées of Marriage, and ſpecially, if the ſame Iuror may by any preſumption, or likelihode, after take benefit of the thing in queſtion: Or if either of the parties to that Iſſue, may be heire to the Iuror, or the Iuror or his heire be heire to the ſaid party: then the Lawe vpon Challenge doth reiect that Iuror for feare of Periurie. But if the kinred or aliance betwéene the party to that ſute, and the Iuror be farre off, and many degrées aſunder: Or that one be a kinſman on the fathers ſide, and the other of the mothers ſide, or one be a kinſman to the other of the halfe blod, or a baſtard, or otherwiſe, in ſuch ſort that the land of the one can not by the courſe of inheritance, and the rules of the Lawe diſcend to the other: Or if the aliance be ſuch, that the ſonne of the one hath married the daughter of the other, and not betwéene themſelues: then the Lawe doth not feare periury in the ſame Iuror, but he may be ſworne to trie that Iſſue. And if there be a ſuite commenced betwéene a Corporation and a priuate perſon, and that doth come to be tried by a Iury, if any of the ſame Iury be neare of kinred, or aliance to any perſon of that Corporation, or to any principall Officer of that Corporation, the Lawe doth ſuſpect him of Periurie therefore, and if hée be challenged for that cauſe, hée ſhall be drawne out of that Enqueſt. The Lawe doth account it a kinde of affinitie, if one of the parties to the ſuite haue baptized, and béene Godfather to a childe of one of the Iurors, and that the Iuror in reſpect thereof doth beare an extraordinary affection, and is to make a recompence to the ſame party, and that therefore in this triall hée will fauour him, and be a meane of Periury: and therefore if the Iuror be challenged for that cauſe, he ſhall be drawen: And ſome doe affirme the ſame cauſe of challenge and feare of Periury to be, if a Iuror hath béene godfather to either of the parties to that triall, or to any childe of his. 1. H. 6, 15. 7. H. 6. 40. Fitz. Challenge 102. 3. Ed. 4. 12. 34 Aſſ. p. 6. 7. Ed. 4. 4. 2. H. 4. 15. 10 H. 6, 24. 7. H. 6. 40. 19. H. 6, 66.

One godfather to an others child.

14 The Lawe expecting to be ſatisfied per Veredictum Iuratorum of the truth

truth of ſuch cauſes as doe come to an iſſue, doth carefully foreſee, that thoſe Iurors who are to deliuer the truth by their verdict, ſhould either before the time of the triall vpon their owne priuate knowledge, or by their Euidence at the time of the triall, be certainely informed of that trueth of the thing in queſtion, leſt by ignorance, miſtaking falſhode for truth, they ſhould ſlide into periurie. And becauſe thoſe that be dwelling, or haue ſome land, where the land, leaſe, or thing in queſtion doth lie, are more likely to haue intelligence of the trueth of the cauſe in queſtion, both to ſatiſfie themſelues, and informe their Companions, than other ſtrangers of the ſame County are, who dwell farre off, the Lawe hath ordained by the Statute of Anno 27. Elizab. That there ſhall be ſixe ſufficient Pundredors impannelled vpon euery Iſſue ioyned, which is to be tried in any of the Courts of the Kings Bench, Common Pleas, and the Exchequer, or before the Iuſtices of Aſſiſe, in all caſes where euery Iuror by the auntient lawes of this Realme ought haue fortie ſhillings of freehold at the leaſt. And that at, or vpon the triall of any perſonall action, there ſhal two ſufficient Pundredors at the leaſt appeare. And for that cauſe, if in thoſe caſes there be not ſo many Pundredors at the leaſt, the Law doth conceiue, they be ignorant of the truth of the Iſſue in triall. And to that end for the auoiding of Periurie, ſhe will reiect the whole Iurie, if they be challenged. And ſo it is in an Aſſiſe, where the plaintife is to be put in poſſeſſion per Viſum Iuratorum (if ſhe recouer) or in any action where the Iurie is to haue the view of the land in queſtion; if the ſame Iurors, or ſome of them had not the view of the land in queſtion, nor did know it before, the Lawe will ſuſpect that they will commit Periury, if they ſhould be ſworne, ſeeing they be ignorant of the land, and know it not in ſpecie. And therefore vpon challenge they ſhall be remoued.

Periurie ſuſpected in reſpect of ignorance of the cauſe.

Sta. 27. Eli. 6

Want of Pundredors.

8. Ed. 3 69. Fitz. Chall. 102. 169.

Want of the view.

15 Becauſe our Law-makers haue in ſeuerall ages found by experience, that nothing is a greater motiue, enticement, or rather inforcement to Periury than need and pouertie: Therefore they haue endeuoured by many ſtatutes to prouide, that ſuch as be returned of Enqueſts, ſhould not onely be men of good behauiour and credite, but alſo of conuenient liuelihode, eſtate, and abilitie to liue of themſelues, for that Neceſſitie (which hath no lawe nor bridle) ſhould not compell them to ſell truth for rewardes, nor to plunge themſelues into Periury for bribes. And for the preuention of this Periurie in poore perſons, and ſuch as be of meane and weake eſtate, by a ſtatute made Anno 21. Edw. 1. it was ordained, That no Sheriffe, Vndерſheriffe, or Bailife of Libertie, ſhall put in any Recogniſances of Aſſiſes, Iuries, Enqueſts, or Attaints, that ſhall paſſe out of their proper County, any perſon of their Bailiwickes (except he hath lands and tenements to the yearely value of a hundred ſhillings at the leaſt) or that ſhall paſſe within the Countie (except he hath lands to the yearly value of fortie ſhillings.) And for the ſame cauſe, and vpon the ſame reaſon of preuention of Periurie in poore and needie perſons, by a Statute made Anno 3. H. 5. it was eſtabliſhed, That no perſons ſhall be admitted to paſſe in any Enqueſt vpon triall of the death of a man, or in any Enqueſt betweene partie and partie, in plea reall, or in plea perſonall, whereof the debt or dammages declared doe amount to fortie markes, if the ſame perſon hath not lands and tenements of the yearely value of fortie ſhillings aboue all charges, ſo that he be challenged for that cauſe by the partie. But by the ſtatute of Anno 23. H. 8. euery perſon being the kings naturall ſubiect borne, which by the name of a Citizen, a freeman, or any other

Periurie in reſpect of pouertie.

Iurors impannelled that ſhal paſſe out of their owne Counties.

Sta. 1. R. 3. 4.

Sta. 21. Ed. 1.

Sta. 3. H. 5. 3.

Sta. 23. H. 8. 13

name, doth enioy the liberties of any City, boꝛough, oꝛ towne coꝛpoꝛat where he dwelleth, being woꝛth in goods to the cleere value of foꝛty pounds, ſhall be admitted in triall of murders, and felonies, in euery Seſſions, and gaoles of deliuery, kept in, and foꝛ the liberte of ſuch cities, boꝛoughs, oꝛ townes coꝛpoꝛat, albeit he hath no freehold. But this Act extendeth not to any knight, oꝛ eſquire, dwelling, abiding, oꝛ reſoꝛting in, oꝛ to any ſuch citie, boꝛough, &c. And by the Statute of Anno 27. Eliz. it was enacted, That in all caſes where any Juroꝛ to be returned foꝛ the triall of any iſſue oꝛ iſſues, ioyned in any of the Courts of the Kings Bench, common Pleas, and the Exchequer, oꝛ befoꝛe Iuſtices of Aſſiſe, by the Lawes of the Realme now in foꝛce, ought to haue eſtate of freehold in lands, tenements, oꝛ hereditaments, of the cleare yearely value of foꝛty ſhillings, in euery ſuch caſe the Juroꝛs that ſhall be returned, ſhall euery of them haue eſtate of freehold in lands, &c. to the cleere yeerely value of foure pounds at the leaſt, out of auncient demeſne within the Countie where the iſſue is to be tried. By the Statute of 11. H. 7. it is pꝛouided, That no perſon ſhalbe impannelled, ſommoned, oꝛ ſwoꝛne in any Jury oꝛ Enqueſt in Courts within the city of London, except he be of lands, tenements, goods, oꝛ cattels to the value of foꝛty Marks. And no perſon ſhall be impannelled, ſummoned, oꝛ ſwoꝛne, in Iuries oꝛ Enqueſts in any Court within the ſaid Citie, foꝛ lands oꝛ tenements, oꝛ action perſonall wherein the debt oꝛ dammages amounteth to the ſumme of foꝛtie marks, except he be in lands, tenemẽts, goods, oꝛ cattels, to the value of one hundꝛed markes. By the ſtatute of Anno 19. H. 7. it was oꝛdained, That euery of the xxiij. perſons dwelling within the ſhire where any riot, rout, oꝛ vnlawfull aſſembly ſhall be cõmitted, which ſhall be returned by the Sherife to enquire thereof, ſhall haue lands and tenements within the ſame ſhire, to the yeerely value of xx.s. of Charter land, oꝛ freehold, oꝛ twenty fiue ſhillings eight pence of copiehold, oꝛ of both, aboue all charges. But in that caſe, by the Statute of Anno 2. H. 5. if they be returned by the Coꝛoners, then euery of them ſhal haue lands and tenements, oꝛ rents to the yeerely value of tenne pounds at the leaſt. By the Statute of Anno 1. R. 3. it was enacted, That no Officer ſhall returne in any pannell to be taken oꝛ put in, oꝛ vpon any inquiſition oꝛ inquiry befoꝛe the ſherife in his Turne, other than ſuch which be of good name and fame, and which haue lands oꝛ tenements of freehold within the ſame countie to the yearely value of twentie ſhillings at the leaſt, oꝛ elſe copiehold lands to the yeerely value of xxvj. ſhillings viij.d. at the leaſt, aboue all charges. By the ſtatute of Anno 8. H. 6. it was pꝛouided, That euery perſon which ſhall be returned to inquire of any foꝛcible entry into lands, oꝛ detaining of lands by foꝛce, ſhal be a ſufficient and indifferent perſon, and ſhal haue lands and tenements to the cleere yeerely value of xl. ſhillings. By the ſtatute of Anno 1. H. 8. it was eſtabliſhed, That euery Juroꝛ which is returned befoꝛe any eſcheatoꝛ, oꝛ commiſſioner, to enquire of lands oꝛ tenements, oꝛ ſome other to his vſe, ſhall haue lands oꝛ tenements of the yearely value of xl. ſhillings, aboue all charges in the ſame ſhire where the inquirie ſhall be made. And by the ſtatute made Anno 11. H. 7. Anno 23. H. 8. and Anno 37. H. 8. The Juroꝛs returned vpon an attaint in London, oꝛ elſewhere, ſhall be of moꝛe oꝛ greater abilitie in lands, tenements, goods oꝛ cattels than is beforꝛe ſpecified.

Juroꝛs to trie felonies in coꝛpoꝛat townes.

Where Juroꝛs muſt haue foure pounds land.

Juroꝛs in London.

Juroꝛs to enquire of riots.

Juroꝛs in the ſhirils Turne.

Juroꝛs to enquire of foꝛcible entrie.

Juroꝛs returned beforꝛe Eſcheatoꝛs.

St. 27. Eli. 6.

St. 11. H. 7. 22

St. 19. H. 7. 13.

St. 2. H. 5. 8.

St. 1. R. 3. 4.

St. 8. H. 6. 9.

St. 1. H. 8. 8.

St. 11. H. 7. 22
23. H. 8. 3.
37 H. 8. 5.

16 The Law hauing ſtrik vſed all good deuiſes to cauſe ſherifes, vnderſherifes, bailifes of liberties, coꝛoners, and all others authoꝛized to returne and impannell Iuries to be indifferent, and to return the ſaid Juries and Juroꝛs without

without all partialitie, and that they ſhall be no furtherers, maintainors, nor aſſiſtors to periurie, ſubornation, or embracery, and alſo hauing prouided that all thoſe Iurors which be ſo returned vpon Enqueſts, and to trie iſſues betweene partie and partie, may againe one by one be liſted, tried, and examined, whether they ſtanding vnſworne be indifferent, or not: She doth then expect to receiue from thoſe Iurors Veredictum a true tale, that is to ſay, a true verdit or preſentment of ſuch things as be giuen them in charge, according to their euidence. But if the ſame Iurors will decline from trueth, and make a falſe preſentment, contrary to their euidence, then is it not to be termed Veredictum, but Periurium, and it will be returned to them as Maledictum: for by the common Law, they being attainted by the verdict of xxiij. other Iurors, ſhall receiue a curſed and villanous iudgement therefore, viz. the ſaid Iurors ſhall loſe the freedome of the Lawe, their wiues and children ſhall be thruſt out of their houſes, their houſes ſhall be pulled downe to the ground, their orchards and gardens ſhall be ſupplanted, their trees ſhall be digged vp by the roots, their meadowes ſhall be eyred vp: All the goods and cattels which they had at the time of the Attaint brought, or at any time after, ſhall be forfeited to the king: The king ſhall haue all the profits of their lands during their liues: And they ſhall be committed to perpetuall priſon. Which iudgement was deuiſed, and many yeares put in execution, to the intent it might be knowne how much the common Law did deteſt and puniſh wilfull Periurie and falſhode, in thoſe who ſhee truſted in place of iuſtice, and from whom ſhe accompted to receiue truth.

Fitz Aſſ. 396. 46.E.3.23. 42.E.3.26. 6.Aſſ.pla.7 30.Aſſ.pla.24 40.Aſſ.pla.20 41.Aſſ.pla.18 Li.Int.fol.92.

The iudgement in and at the common law of a Iury proued periured.

17 But ſithence by the ſtatute of Anno 11.H.7. and Añ 23.H.8. the ſaid iudgement againſt a petit Iurie attainted, is in ſome caſes altered and qualified, for by the ſtatute of 11.H.7. it is ordained, That the partie grieued by any falſe verdict giuen in any of the Courts of the City of London, ſhall and may ſue Attaint by Bil in the Huſtings of London, holden for common pleas before the Maior and Aldermen of the ſame Citie. And if the graund Iurie ſworne in the ſame Attaint, finde that the petit Iury haue giuen an vntrue verdict, then the iudgement ſhalbe againſt the defendant, as is vſed in attaint ſued by writ at the common Law: And the iudgement ſhal be againſt the petit Iury, that euery of them ſhall loſe xx. pounds, or more, by the diſcretion of the Maior and Aldermen of the ſaid City keeping the Huſtings, to ſuch vſes as other iſſues and penalties bene forfeited in any action or plaint commenced before the Maior and Aldermen of the ſaid citie; and his bodie to be impriſoned, there to remaine without baile or mainprize ſire moneths, or leſſe, by the diſcretion of the Maior and Aldermen; and to be diſabled for euer to be ſworne in any Iury before any temporal Iudge: But the iudgement in ſuch Attaint ſhall not extend to any lands or tenements, ne to other puniſhment of the petit Iurie. And by the before mentioned Statute of Anno 23.H.8. it was enacted, That vpon euery vntrue verdit giuen betweene party and party in any ſuit, plaint, or demaund, before any Iuſtices or Iudges of Record, where the thing in demand, and verdict thereupon giuen extendeth to the value of fortie pounds, and concerneth not the leopardie of mans life, the partie grieued by the ſame verdict ſhall haue a writ of Attaint againſt any perſon ſo giuing an vntrue verdict, and euery of them, and againſt the party which ſhall haue iudgement vpon the ſame verdict. And euerie one that ſhall paſſe in the ſame Attaint, ſhall haue lands and tenements to the value of twentie marks by yeare of freehold, out of auncient demeſne. And if the graund Iurie finde

St.11.H.7.21

The iudgement in Attaint in London.

St.23.H.8.3 An.13.El.25.

In attaint where the thing extendeth to xl.l.

that the petit Iurie gaue an vntrue verdict, then euery of the ſaid petit Iuries ſhall forfeit twenty pounds, whereof one halfe ſhall be to the king, and the other halfe to him that ſueth, to be leuied by Capias ad ſatisfaciendum, fieri facias, or Elegit, or by Action of Debt againſt euery perſon of the petit Iurie ſo forfeiting, and againſt his Executors and Adminiſtrators, hauing then ſufficient goods of their ſaid Teſtator not adminiſtred. And euery of the ſaid petit Iurie ſhall ſeuerally make fine by the diſcretion of the Iuſtices before whom the ſaid falſe Serement ſhall be found, after their ſeuerall offences, defaults, and ſufficiencie of them. And thoſe of the petit Iurie ſo attainted ſhall neuer be after of any credit, nor their oath accepted in any court. And if a falſe verdict be giuen in any action, ſuit, or demaund before any Iuſtice, or Iudge of Record, of any thing perſonall, as debt, treſpas, and other like, which ſhall be vnder the value of fortie pounds, then the party grieued ſhall haue an Attaint. And if the petit Iurie be attainted, then euery of them ſhall forfeit fiue pounds to the king and the party after the forme aforeſaid, and alſo ſhal make fine by the diſcretion of the Iuſtices. And euery perſon that may diſpend fiue markes by the yere of freehold, out of auncient demeſne, or is worth an hundred markes in goods, is able to paſſe in the ſame Attaint.

Attaint where the thing doth not extend to. xl. pounds.

18 The Lawe doth ſo hate Periurie, and ſo much endeuour to extirpate the very rote thereof, that the doth ſometime puniſh it in the onely will and intention of a man, though that will neuer come to effect, ſo that the ſame will and meaning may be laied open vnto her, by due proofe; as it appeareth by a branch of the before ſpecified ſtatuts of Anno 11. H. 7. whereby it is ordained, That if it be found by the graund Iurie that the petit Iurie haue giuen a true verdict, in any of the Courts of the Citie of London, in a ſuite whereupon an Attaint is brought, then the graund Iurie ſhall haue authoritie to enquire if any of the petit Iurie hath receiued any ſumme of money or other reward, or promiſe of money or other reward, of the named defendants, or tenants in the ſame Attaint, or of any other perſon by the commaundement, couin, or aſſent of any of them, for the intent of their verdict giuing, whereupon the ſame Attaint is grounded: And after anie ſuch corruption by the ſaid graund Iurie found, then the Iuror that is ſo found defective in taking mony, or rewards &c. ſhal pay to the plaintife named in the ſaid Attaint, ten times the value of the ſumme, or other reward ſo taken, or promiſed, and ſhal ſuffer impriſonment without Baile or Mainprize ſixe moneths, or leſſe, by the diſcretion of the Maior and Aldermen of the ſaid citie, and ſhall be diſabled for euer to be ſworne in anie Iurie before anie temporall Iudge. And ſuch Defendant and Tenant in the ſame Attaint, ſhall paie to ſuch vſe as other penalties be forfeited within the ſame Citie, tenne times the valew of the ſumme of money, or other reward by him ſo giuen to anie of the ſaid petit Iurie, and ſhall be impriſoned without Baile or Mainprize during ſix moneths, or leſſe, by the diſcretion of the ſaid Maior and Aldermen. And in like ſort, and for the ſame cauſe the Statutes of Anno 34. Edw. 3. and 38. Edw. 3. were prouided, whereby it was enacted, That if anie Iuror ſworne in Aſſiſes, or other Enquells to bee taken betweene the King and the partie, or betweene partie and partie, doe by himſelfe or anie other take anie thing of the Plaintife or Defendant, to giue his verdict, and thereof is attainted at the ſuite of the partie, which will ſue for himſelfe, or for the King, or of anie other perſon (entring his plaint by Bill immediately before the Iuſtices before whom the Iurie was ſworne) the ſaid Iuror ſhall paie tenne

The meaning to commit periurie punished.

Stat. 11. H. 7. 21.

Decies tantum

Stat. 34. Ed. 3. 8. 38. Ed. 3. 12.

Decies tantum

times

times ſo much as he hath receiued. And all thoſe which bee Imbraceors to lead and procure ſuch Enqueſts in the Countrie, to make a gaine and profit thereof, ſhall bee puniſhed as the Iurours. And if the Iuror or Imbraceor ſo attainted haue not wherewith to make recompence in ſome aforeſaid, he ſhall be one yeare impriſoned; which impriſonment ſhall not be pardoned for any fine: and the partie grieued may haue his action before other Iuſtices if hee will. But no Iuſtice or other officer ſhall inquire of office vpon any of the points of this Statute, but onely at the ſuit of the partie, and of others, as aforeſaid. By which foreſaid Statutes it doth appeare, that the Law doth puniſh Periurie, not onely in ſuch Irors as do commit it, but alſo in thoſe perſons who be the Imbraceors, Perſwaders, or Procurers of it: and not onely in thoſe who doe commit or procure it, but likewiſe in thoſe who giue or take rewards to haue it done, though it bee neuer effected: for ſhee accounteth, that when a man hath giuen his heart leaue for a reward to bee ſworne, it is the reward he reſpecteth in his oath, and not the truth of the cauſe; which reward will lead him blindfold into the dungeon of Periurie, and therefore hee deſerueth to be puniſhed as a periured perſon. S. Maintenance &c. 6. Imbraceors.

19 Becauſe diuers did reſort to Iurors in Wales, and the Marches thereof, and ſuborned them to acquit Murderers, Felons, and Acceſſories openly knowne: therefore by a Statute made Anno 26. H. 8. it was enacted, That forthwith vpon the charge giuen to any Enqueſt, to bee taken and ſworne before any Iuſtices, Steward, Lieutenant, or other officer within Wales, or the Marches of the ſame, of, for, or vpon any Trauerſe againſt the king, or the trial of any Recognizance broken, or any other forfeiture forfeited to the King, or of, for, and vpon the triall of any Murderer, felon, or acceſſorie of felonie or murder, an officer ſhall be ſworne for the keeping of the ſame Iurors. And if the ſame Iurors doe acquit any ſuch felon, murderer or acceſſorie, vpon whoſe triall they ſhall be charged, or giue any vntrue verdict againſt the King, vpon the triall of any Trauerſe, Recognizance, or other forfeiture, contrarie to the god and pregnant euidence miniſtred to them by the perſons ſworne before the ſaid Iuſtice, Steward, Lieutenant, or other officer: Or that the ſaid Iurors or any of them doe eate, drinke, or ſpeake to, or with any perſon, or perſons, than to ſuch as be ſworn with them, or otherwiſe miſdemeane themſelues after they be ſworne, and before they haue giuen their verdict: Then the Lord Preſident or other of the Councell of the Marches for the time being, vpon notice or complaint thereof to be made, ſhall not onely haue authoritie to call ſuch Iurors before them, but alſo the ſame Iuſticiar, Steward, or other officers, afore whom any ſuch acquitall, vntrue verdit, or miſdemeanors ſhall happen to be made, ſhal haue full power to compell ſuch Iurors, and euery of them, vpon paine of impriſonment, to be bound by Recognizance in a certaine ſumme of money, by their diſcretion to be limited, that the ſame Iurors, and euery of them ſhall perſonally appeare at a certaine day by the ſame Iuſticiar, Steward, or other officer to be limitted, before the Lord Preſident, and other of the Councell aforeſaid for the time being, then, and there to abide, and ſtand to ſuch direction & order, as the ſame Councell ſhal make, ordaine, and decree, of, in, & vpon the ſame. And the ſame Councell ſhall therupon haue authority by examination, or otherwiſe, to heare & determine all & euery ſuch cauſe, & ſhall haue like authoritie to commit euery of the ſame Iurors to priſon, or other puniſhment, as ſhalbe thought mete by 2 m. 26. H. 8. 4. The puniſhment of periurie committed by an enqueſt in Wales.

the

the diſcretion of the ſaid counſell, or otherwiſe aſſeſſe, or tare euery ſuch Iuror to his fine and ranſom by the ſame diſcretion, to be paid & leuied of their lands, goods, & cattels, to the vſe of the King.

Periury committed by witneſſes.

20 Hauing written of the reſtraint and puniſhment of periurie in Irors conſiſting of twelue perſons at the leaſt, impannelled or ſworn to deliuer their verdict according to their euidence, I am now to expreſſe what puniſhments the law doth inflict vpō ſuch, which doe come one by one, as deponents, or witneſſes, to teſtifie the truth, and to informe the Iudge, or the Iurie of the veritie of the matter in iſſue or queſtion, according to their knowledge, whereof euery man by himſelfe may be called ſingularis teſtis, though there be more witneſſes ſworne in that cauſe. And ſeeing that iuſtice cannot be executed without the knowledge of the truth of the cauſe in queſtion, & that truth is in moſt caſes only to be deliuered by the othes and teſtimonies of ſuch parties as were witneſſes, priuie, or beſt acquainted with the matter in variance: Therefore firſt it is to be obſerued, that the wiſdom of the law hath thought it neceſſarie, to prouide that ſuch witneſſes may be compelled vnder a great pain to appeare in court, and teſtifie their knowledge concerning ſuch matter in queſtion: as by the Statute made Anno 5. El. it was ordained, That if any perſon vpon whom any proces out of any of the courts of Record within this Realme, or Wales, ſhall be ſerued, to teſtifie or depoſe concerning any matter depending in any of the ſame courts, and hauing tendered to him according to his countenance, or calling, ſuch reaſonable ſums of money for his coſts and charges, as (hauing regard to the diſtance of the places) is neceſſarie to be allowed in that behalfe, do not appeare according to the tenor of the ſaid Proceſſe, hauing not a lawfull and reaſonable let to the contrarie; then the partie making default ſhall forfeit for euery ſuch offence x. l. and ſhall yeeld ſuch further recompence to the partie grieued, as by the diſcretion of the Iudge of the court out of the which the ſaid proces ſhall be awarded, according to the loſſe and hinderance that the partie which procured the ſaid proces ſhall ſuſtaine, by reaſon of the non-appearance of the ſaid witneſſe: the ſaid ſeuerall ſummes to be recouered by the partie ſo grieued againſt the offendor by A. I. B. P. &c. in any of the K. courts of Record, wherein no W. E. or P. &c.

A witnes vpon proces ſerued ſhall appeare.

Sta. 5. El. 9. Sta. 23. El. 5.

21 There were ſeuerall ſtatutes made during the raignes of king H. 6. K. H. 7. and K. H. 8. againſt Periurie, and the procurers and committers of periurie: and laſtly one was ordained Anno 32. H. 8. againſt ſuch as ſhould ſuborne witneſſes, to the hinderance of Iuſtice, and the procurement of periurie: Sithence the making whereof, for that the penaltie therein is ſmall towards the offendors in that behalfe, the ſaid offence of ſubornation, and ſiniſter procurement of falſe witneſſes did neuertheleſſe greatly increaſe, and by reaſon of the wilfull Periurie committed by the ſame ſuborned witneſſes, diuers perſons did ſuſtaine diſheriſon, and great impoueriſhment, as well of their lands and tenements, as of their goods and cattels: for the redreſſe and more sharpe puniſhment whereof, by a Statute made Anno 5. El. it was enacted, That al and euery perſon and perſons which ſhall vnlawfully, and corruptly procure any witnes, or witneſſes, by Letters, Rewards, Promiſes, or by any other ſiniſter and vnlawfull labour, or meanes whatſoeuer, to commit any wilfull and corrupt Periurie, in any matter or cauſe whatſoeuer, depending in ſuit and variance by any Writ, Action, Bill, Complaint, or Information, in any wiſe concerning any lands, tenements, or hereditaments, or any goods, cattels

St. 32. H. 8. 9.

The penaltie for procuring of wilfull periurie in witneſſes.

Sta. 5. El. 9. 29. El. 5.

tels, debts, or dammages, in any of the Courts of Chauncerie, Starre chamber, White hall, or in any other of the Kings Courts of Record, or in any Leet, view of Franke pledge, or Law day, Auncient demeſne Court, Court Hundred, Court Baron, or in the Court or Courts of the Stannery in the Countie of Deuon, and Cornewall: Or ſhall likewiſe vnlawfully and corruptly procure, or ſuborne any witneſſe, or witneſſes, which ſhall be ſworne to teſtifie in perpetuam rei memoriam: Then euery ſuch offendor or offendors, ſhall for his, hers, or their ſaid offence, being thereof lawfully conuicted or attainted, forfeit fortie poundes to the King and the partie grieued, hindered, or moleſted, by reaſon of any of the offences aforeſaid, that will ſue for the ſame by A. B. P. or I. in any of the Kings Courts of Record, wherein no W. E. P. or I. ſhall be allowed. And if it happen any ſuch offend or offendors being ſo conuicted or attainted as is aforeſaid, not to haue any goods or cattels, Lands or Tenements to the value of fourtie pounds, then euerie ſuch perſon or perſons ſo conuicted or attainted of any of the offences aforeſaid, ſhall ſuffer impriſonment one halfe yeare, wythout Bayle or Mayneprize, and ſtand vpon the Pillorie one whole houre in ſome Market Towne, nere, or next adioyning to the place where the offence was committed, in open market there. And no perſon being ſo conuicted or attainted ſhall be from thenceforth receiued as a witneſſe to bee deposed in any court of Record within any of the Kings Dominions of England, Wales, or the Marches of the ſame, vntill the Iudgement, giuen againſt him, or them, ſhall bee reuerſed by Attaint, or otherwiſe. And vpon euery ſuch reuerſall, the parties grieued ſhall recouer his or their dammages againſt all and euery ſuch perſon and perſons as did procure the ſaid Iudgement ſo reuerſed to be firſt giuen againſt them, or any of them, by action to be ſued vpon his or their caſe, according to the courſe of the common Law.

The penaltie for committing of wilfull periurie.

Stat. 5. El. 9.

22 If any perſon or perſons, either by the ſubornation, vnlawfull procurement, ſiniſter perſwaſion, or meanes of any others, or by their owne act, conſent, or agreement, ſhall wilfully and corruptly commit any manner of wilfull periurie, by his, or their depoſition, in any of the Courts before mentioned, or being examined ad perpetuam rei memoriam: Then euery perſon or perſons offending, ſhall for his or their ſaid offence loſe and forfeit rr. pounds to the King and the partie grieued, hindred, or moleſted by reaſon of any of the offences before mentioned, that will ſue for the ſame by A. B. P. or I. in any of the Kings courts of Record, wherein no W. E. P. or I. ſhall be allowed, and ſhall haue ſixe monthes impriſonment, without Baile or Mainprize. And the oath of ſuch perſon or perſons ſo offending from thenceforth, ſhall not bee receyued in any Court of Record wythin England, or Wales, or the Marches of the ſame, vntill ſuch time as the iudgement giuen againſt the ſaid perſon or perſons ſhall be reuerſed by Attaint, or otherwiſe. And vpon euerie ſuch reuerſall, the parties grieued, to recouer his or their dammages againſt ſuch perſon and perſons as did procure the ſaid iudgement ſo reuerſed to be giuen againſt them, by action to be ſued vpon his caſe. And if the ſaid offendor haue not any goods or cattels to the value of rr. pounds, then he ſhall be ſet on the Pillorie in ſome Market place within the Shire, City, or Borough, where the ſaid offence ſhall be committed, by the Shirife, or his miniſters, if it be without any citie or towns corporat: and if it be within any citie or town corporat, then by the head officer

or

or officers of the ſame citie or &c. or by his or their miniſters, and there ſhall haue both his eares nailed, and from thenceforth be diſcredited and diſabled for euer to be ſworn in any of the Courts of Record aforeſaid, vntill the iudgement ſhall be reuerſed; and thereupon ſhall recouer his dammages in manner and forme before mentioned.

In what courts Periurie ſhalbe punished.

23 As well the Iudge and Iudges of euery ſuch of the ſaid courts where any ſuch ſuit is, or ſhall be, and whereupon any ſuch periury is or ſhall happen to be committed, as alſo the Iuſtices of Aſſiſe, and gaole deliuery in their ſeuerall circuits, and the Iuſtices of the peace in euery countie within this realm, or in Wales, at their Quarter Seſſions, both within liberties and without, ſhall haue authorities by vertue hereof, to enquire of all and euery the defaults and offences committed contrarie to this act, by inquiſition, preſentment, bill, or information, before them exhibited, or otherwiſe lawfully to heare and determine the ſame, and thereupon to giue iudgement, award proceſſe, and execution of the ſame, according to the courſe of the lawes of this Realme. St. 5. El. 9.

Proclamation of this Statute.

24 The Iuſtices of Aſſiſe of euery circuit within this Realme ſhall in euery Countie within their circuites two times in the yeare, viz. in the time of their ſittings, make open Proclamation of this Statute, or of the effect thereof, to the intent that no perſon ſhall be ignorant of the penalties herein contained. St. 5. El. 9.

Periurie punished in the ſpirituall court.

25 Prouided that this Act, or any thing therein contained, ſhall not extend to any ſpirituall or Eccleſiaſticall court within this Realme of England, or Wales, or the Marches of the ſame; but all and euery ſuch offendor and offendors as ſhall offend in forme aforeſaid, ſhall and may be puniſhed by ſuch vſuall and ordinarie lawes, as heretofore hath bin, and yet be vſed in the ſaid Eccleſiaſticall court: any thing in this Act &c. notwithſtanding. St. 5. El. 9.

Periurie punishable in the Starchāber.

26 Prouided that this Act ſhall not extend to reſtraine the power or authoritie giuen by Act of Parliament made Anno 11. H. 7. to the Lord Chancellor, and others of the Kings Councell, to examine, and puniſh riots, routs, hanious Periuries, and other offences (which haue vſed to heare and determine ſuch matters in the Starre-chamber at Weſtminſter) nor to reſtraine the power of the Lord Preſident and Councell in the Marches of Wales, or in the North, nor of any other Iudge hauing abſolute authorities to puniſh Periurie before the making of this Statute: But they and euery of them ſhall proceed in the puniſhment of all offences heretofore puniſhable, in ſuch wiſe as they might haue done & vſed to do before the making of this Act, to all purpoſes, ſo that they ſet not vpon the offendors leſſe puniſhment then is contained in this Act. St. 5. El. 9. St. 11. H. 7. 25.

28 Becauſe by the ſaid ſtatute of 5. Eliz. 9. there is no Ordinance made for the puniſhment of thoſe Bankrupts, who being ſworne and examined vpon Interrogatories by Commiſſioners thereunto authorized, ſhall commit Periurie: Nor for the puniſhment of thoſe witneſſes, who either by the procurement of others, or by their owne conſent ſhall commit Periurie, being examned by the ſaid Commiſſioners touching Bankrupts goods or debts: Therefore by a Statute made Anno 1. Iac. it was ordained, That it ſhall be lawfull for the Commiſſioners authorized vnder the great Seale of England, or St. 1. Iac. 15.

the

the greateſt part of them, to take order with Bankrupts bodies, lands, tenements, and hereditaments, money, goods, cattels, wares, & debts, to examine the ſaid offendor or offendors vpon ſuch interrogatories, touching the lands, tenements, goods, cattels, and debts, bils, bonds, bookes of accompt, and ſuch other things as may tend to diſcloſe his, her, or their eſtate, or the ſecret grants, conueyances, and cloigning of his, her, or their lands, tenements, goods, money, and debts, as they ſhall thinke mæte. And if therein the offendor or offendors ſhall refuſe to be examined, or to anſwere fully to euery interrogatorie, to him to be miniſtred by the ſaid Commiſſioners, or the greater part of them, it ſhall be lawfull for the ſaid Commiſſioners, or the greater part of them, to commit the ſaid offendor or offendors to ſome ſtrait or cloſe impriſonment, there to remaine, vntill he, ſhe, or they ſhall better conforme him or her ſelfe. And if vpon his, her, or their examination it ſhal appeare, that he, ſhe, or they haue committed any wilfull or corrupt Periurie, tending to the hurt or dammage of the creditors of the ſaid Bankrupt, to the value of tenne pounds of lawfull money of England, or aboue, the party ſo offending ſhall or may thereof be indited in any of the Kings Courts of Record, and being lawfully conuicted thereof, ſhal ſtand vpon the Pillory in ſome publike place by the ſpace of ij. houres, and haue one of his eares nailed to the Pillory and cut off. And by the ſame ſtatute of Anñ 1. Iac. it is further eſtabliſhed, That if any perſon or perſons (other then the Bankrupt) either by ſubornation, vnlawfull procurement, ſiniſter perſuaſion or means of any others, or by his owne act, conſent, or agreement, ſhall wilfully and corruptly commit any manner of wilful Periury, by his depoſition to be taken before the ſaid Commiſſioners, or the greater part of them, as is aforeſaid: Then the party or parties ſo offending, and all and euery perſon and perſons that ſhall vnlawfully and corruptly procure any ſuch vnlawfull, wilfull, and corrupt Periurie, ſhall or may therefore be indited in any of the Kings Courts of Record, and after his or their conuiction thereof, ſhal incurre ſuch forfeiture, and receiue & haue ſuch paines and puniſhment as are limitted by the ſtatute made concerning Periury, Anñ 5. Eliz. 9.

Periury puniſhed in Bankrupts.

Periury committed by witneſſes for Bankrupts.

St. An̄ 5. El. 9.

Co. li. 5. fo. 99. 28 A man cannot be indited for Periurie vpon the foreſaid ſtatute of 5. El. for giuing falſe euidence on his oath to the Enqueſt at a Seſſions, vpon an Indictment of Riot: For the ſtatute was ordained againſt procurers of Periurie, in a matter depending in ſuit and variance, by any Writ, Action, Bill, Complaint, or Information, and ſo procurement of Periurie vpon an indictment is out of this braunch of the ſaid ſtatute. And the ſecond braunch of the ſame ſtatute touching committing of Periury, ſhal haue the ſame conſtruction which the firſt hath, though it be not there in words, and ſhall haue reference to the firſt: And it ſhall be expounded as if the words of the ſtatute had bene, If any perſon ſhall wilfully and corruptly commit any wilfull Periurie in any cauſe depending in ſuit by any Writ, Bill, Action &c. And the ſame law is, if a man commit wilfull Periurie, vpon euidence giuen to the great Enqueſt vpon an indictment of Felony, he is not to be puniſhed by force of the foreſaid ſtatute of Anno 5. Eliz.

Periury committed vpon an indictment of Riot.

Periury vpon an indictment of Felony.

5. & 8. Eliz. Dyer 243. St. 2. E. 6. 13. St. 3. H. 7. 1. 29 If wilfull Periurie be committed in the Kings bench, by any witneſſe produced to proue a Suggeſtion, for a Prohibition there graunted againſt an Eccleſiaſticall Judge, according to the ſtatute of 2. & 3. Ed. 6. wherby the party is ſtaied of his conſultation, this ſhall not be examined and puniſhed in the Starre chamber: for the ſtatute of 3. H. 7. which maketh mention of ſuch things

Periury in proouing a ſuggeſtion for a prohibition.

things as the Court of Starre chamber is to hold plea of, prouideth no more punishment by ſpeciall words for Periurie, then it doth for Murder or Rape. There is a proviſo in the foreſaid ſtatute of Anno 5. El. That the Lord Chancelor and others of the Quéenes Counſell ſhall and may proceed in the punishment of all offences, in ſuch wiſe as they might haue done, and vſed to do, before the making of the ſaid Act to all purpoſes, ſo that they ſet vpon the offendors no leſſe punishment then is contained in the ſaid Act.

A ſuit vpon periurie in the Chancery.

30 A Bill of Periurie may be ſued in the Chancery for a periurie committed in the ſame Court, contrary to the foreſaid ſtatute of Anno 5. El. and if the defendant do plead vnto it not guilty, he ſhall be ſworne to his plea, and alſo ſhall anſwer to Interrogatories, as it is vſually done in the Starre chamber, for the L. Chauncellor had abſolute power before the ſaid ſtatute of Ann 5. El. to punish Periury. And therefore by a proviſo in the ſaid ſtatute, his power therein is not reſtrained by the ſame ſtatute. And if the Court of Chauncery will examine Periury committed there, it muſt be done by a bill in Latin, and pleaded in Latin, and the iſſue ſhalbe ioyned there, and tried in the K. Bench, as it is vſed in the like caſes. 12 El. Dyer 288.

Where periury ſhalbe puniſhed in the temporall court, & where in the ſpirituall.

31 There is no remedy or punishment for Periurie in a ſpirituall Court againſt indictors, that do endite a man of felony, which be periured, or againſt a Jury which doth giue a falſe verdict betweene party and party: And if a ſuit be commenced in the ſpirituall court againſt an offendor in Periurie, in either of thoſe caſes, he may haue a prohibition, for this periury doth riſe vpon a cauſe that is temporall, viz. the Treaſon, or Felony, Debt, Treſpas, or plea of land: and for this periury the offendors ſhall be puniſhed by attaint by the common law, or otherwiſe. And ſo it is, if a man be defamed by a falſe indictment, there is no remedy in the ſpiritual Court for his defamation, for that it groweth vpon a matter which is temporal. But where the Periury doth riſe vpon a matter which is ſpirituall (as vpon a Teſtament, Patrimony, or Legacie, or ſuch like) then the ſpirituall Judge hath authoritie to puniſh it, and in that caſe a Prohibition will not lie. And as there is no punishment in the Eccleſiaſticall Court for Periurie that doth riſe vpon a cauſe that is temporall: So the Law hath prouided, that defamation (which is another euill fruit of a malicious and corrupt heart, and of a leud and venomus tongue) ſhall not be puniſhed in the Eccleſiaſticall Court, vnleſſe it concerne matter that is merely ſpirituall, and determinable in the Eccleſiaſticall Court, as to call a man Hereticke, Schiſmaticke, Adulterer, Fornicator &c. and vnleſſe it doth concerne matter that is merely ſpirituall onely: For if ſuch a defamation doe concerne any thing that is determinable at the common Law, the Eccleſiaſticall Judge ſhal not hold plea thereof. And yet if ſuch a defamation be merely ſpirituall, and onely ſpirituall, notwithſtanding he that doth ſue in the Eccleſiaſticall Court for being defamed, cannot ſue there for recompence or dammages, but only for the puniſhment of the offence. 22. H. 8. Fol. 39.

Defamation. Co. Lib. 4. 20.

Main-

Maintenance, Champertie, Embracerie, and Buying of Titles.

1 MAintenance is, where a man giueth to another (that is demaundant, or tenant, plaintife or defendant in any suit, or to any other in his behalfe, or to his vse) any summe of money, or other reward for to maintaine his plea or suit: Or otherwise vseth persuasion, or maketh labour for him, or vseth other meanes to countenance, aid, or assist him, when he himselfe hath nothing therewith to do. Which is an offence that the wisdome of the Realme from age to age hath condemned, and hath indeuored to inflict diuers punishments vpon the transgressors therein, as it may appeare by the statuts of West.1. West.2. 28.Ed.1. 33.E.1. 8.H.6. 19.H.7. 32.H.8. & 18.El. The law doth so greatly desire the continuance of peace betweene one member of the Common weale, and another, and so much condemneth variance and suits without cause, that many times and in many causes the plaintife is amerced for commencing a wrongfull suit: for the law doth intend those suites to be pursued for veration & trouble: and like wise in some other cases the defendant is amerced for the wrongfull detaining of that which is not his own, & for inforcing the plaintife by suit in law to seeke & recouer his owne. But as in al cases the vnlawful maintainor of suits is in fault, so is he in euery such case punishable. For though the case of the plaintif or defendant which he vndertaketh to maintaine, be iust and lawfull in him, who prosecuteth or defendeth the suit, & whose the cause is, yet in the maintainor it is vnlawfull, for it is not his owne suit, neither is it pursued or defended for the recouery or protection of that which he pretendeth to be due to himself; & so in a sort he maketh complaint where he hath no wrong, or maketh defence where none seeke to hurt him, whereby, opposing himselfe against others who do not contend with him, he laboureth to disturbe the ordinary course of iustice, & therewith to blemish the peace of the Realme: for as it appeareth partly by the statute of An 1.Ed.3. & specially by the preamble of the statute of An 32. H.8. Nothing conserueth the people in more peace and good concord, then the due administration of iustice, and the indifferent triall of titles and issues, according to the Lawes of this Realme, which being hindred & letted by Maintenance, Embracery, Champertie, Subornation of witnesses, finister labour, and buying of Titles, there will of necessitie insue thereof great periurie, vnquietnesse, oppressions, troubles, wrongs, and disheritances.

what maintenance is, & the enormities thereof.

Sta.1.Ed.3.14

32.H.8.9.

2 And because this Maintenance is as an euill Tree hauing growne out of it many corrupt branches: therefore the wisdome of the Realm hath from time to time prouided seuerall statutes (as it were sharpe hatchets) to loppe or shred those boughes when they did spring and shoot out. As King Ed. 3. perceiuing that his Counsellors, Magistrates, and Officers, in his house, & certaine great men of the Realme, by sending of Letters, Messengers, giuing of Liueries, & by other means, did sollicite matters, and maintaine quarrels, and take parts in the Countrey, by a statute made Anno 1. of his raigne, and an other Anno 20. of his raigne, did ordaine, That common right should be done to all persons, as well poore as rich: and that none of his said Officers, nor any Noblemen, nor any other great or small, should take vpon him to maintaine quarrels, or to take parts, to the let or disturbance of the common law: Nor that any should take in hand, or meddle with quarrels or questions, but their owne. And because there was no speciall punishment ordained by the said statute of Anno 1. E. 3. for those who should transgresse that Law, therefore King R. 2. by a statute made in the first yeare of his raigne established, That if the kings Counsellors or great Officers should take vpon them to sustaine any quarrell by Maintenance in the Countrey, or elsewhere, he so offending should indure that paine which should be inflicted by the King himselfe, by the aduice of the Lords of his Realme: and other inferior officers and seruants of the Kings, in the Exchequer, and other Courts: and his meniall seruants shall lose their offices and seruices, and be imprisoned, & be ransomed at the kings pleasure, euery of them according to his degree, estate, and desert: and all other persons of the Realme, of what estate soeuer they be, shal be imprisoned and ransomed as the other aforesaid.

Maintenance by men of authoritie.

Sta. 1. E 3. 14. 20. E. 3. 3.

Sta. 1. R. 2. 4.

3 The statute intituled Definitio de conspiratoribus made Anno 33. E. 1. doth decypher another sort of Maintainors, which there be called conspirators in this sort, viz. Conspirators be they that bind themselues by oath, couenant, or other alliance, that euery of them shall helpe and sustaine the other, falsely, & maliciously to indite, or falsely to moue or maintaine pleas: and also such as cause children within age to appeale men of felony, whereby they are imprisoned & sore grieued: & such as retaine men in the countrey with liueries, or fees, to maintaine their malicious enterprises; and this extendeth aswell to the takers as to the giuers: and Stewards and bailifes of great lords, which by their seigniorie, office, or power, vndertake to vphold or maintaine quarrels, pleas, or debates, that concerne other parties then such as touch the estate of their Lords, or themselues.

Maintenance by combination.

Sta. 33. E. 1.

Sta. 1. R. 2. 7.

Maintenance by Noblemens officers.

4 There is also an other kind of Maintenance, which is called Champerty, and the offendors therein called Champertors, whom the foresaid statute of Anno 33. E. 1. doth define in this maner, viz. Champertors be they that mone pleas and suits, or cause to be moued, either by their owne procurement, or by others, & sue them at their proper costs, for to haue part of the land in variance, or part of the gaines: which Champertors were accounted great maintainors of suits, and professed enemies to peace: whereupon it was ordained by the statute of West. 1. That no Officer of the Kings, by themselues, nor by other shal maintaine pleas, suits, or matters hanging in the Kings Court, for lands, tenements, or other things, for to haue part or profit thereof, by couenant made betweene them, and he that doth, shall be punished at the king pleasure: and after by the statute of Westm. 2. the same was expressed more at large, by

Maintenance by champerty.

Who be champertors.

Sta. 33. E. 1.

Sta. 3. E. 1. 25.

Sta. 13. E. 1. 48

by the which it was enacted, That the Chauncellor, Treasurer, Justices, nor none of the Kings Counsell, no Clarke of the Chancery, nor of the Exchequer, nor of any Justice, or other Officer, nor none of the Kings house, Clarke nor Lay, shall receiue any Church land nor tenement by gift in fee, nor to farme, nor for purchase, nor otherwise, so long as the thing is in plea in the Kings Court, or before any of his Officers, nor shall take reward therefore: and he that doth contrary to this Act, eyther himselfe, or by any other, or make any bargaine, shall be punished at the Kings pleasure, as well he that doth purchase, as he that doth giue. And because other Officers were not bound by the foresaid Statutes as well as the Kings, & to the intent some certaine and more sharp penalty might be imposed vpon the transgressor of the said statuts, then before time had bẽ prouided, Therefore by a statute made Añ 28. Ed. 1. intituled Articuli super Chartas, it was ordained, That no Officer, nor any other (for to obtaine part of the thing in plea) shall maintaine any matter that is in suit: Nor none vpon such couenant shal giue vp his right to another, and if any doe and be attainted thereof, the taker shall forfeit to the King so much of his lands & goods, as doth amount to the value of the part that he hath purchased for such Maintenance: and to obtaine that, any person that will, shalbe receiued to sue for the King, before those Justices before whom the suit doth depend, and the iudgement shalbe giuen by them. But it may not be vnderstood in this case, that a man may not haue counsell of pleaders & learned men for his fee, nor of his next friends. And after, to the intent to impose a sharper punishment vpon such as should be offendors in Maintenance, Champerty, or the like, by a statute made Añ 33. Ed. 1. it was enacted, That if any person do take vpon him for Maintenance, Champerty, or the like bargain, any manner of suit or plea against another, and is attainted of such assumption, suit, or bargaine, or of consent thereunto, he shalbe three yeares imprisoned, and further punished at the kings pleasure.

St. 28. Ed. 1. 11.

Pleaders may giue counsell for their fees.

St. 33. Ed. 1.

The punishment of champertors.

Fitz. Na. Br. 171. 7. Ed. 3. 9. Fitz. Champ. 6

5 And so it appeareth by the foresaid statutes, that it is Champerty, where a man by couenant or agreement made by writing or word, doth bargaine to haue parcell of the land, debt, or other thing which is in suit, if it be recouered to aid and maintain the party to that suit: and in this case, he that is the other party to that suit, & oppressed or grieued by this Maintenance, may prosecute a writ of Champerty against the same offendor, or a writ of Maintenance at his choice, for euery Champerty is Maintenance, but euery Maintenance is not Champerty. And in this case of Champerty, he that selleth his land, or demiseth his land for life or yeares, or any part thereof, during the time that the same land is in suit, shall be punished according to the foresaid statute of 28. Ed. 1. as well as he that purchaseth the same land. And the writ of Champerty may be brought against the buyer alone, or against the seller alone. And it is all one penalty where he selleth his land for mony or other consideration, and where he freely doth giue his land: for if it be giuen during the time that the land is in suit, it is Champertie: for the Law doth prohibite euery man to obtaine land when it is in suit. But if a man purchase land after iudgement, it is no Champertie, for then there is no suit depending touching that land: and if a man that is learned in the Law, and doth giue counsell therein, doe take part of the land that was in variance of his client for his fees, after the same is recouered, this is no Champerty: So that the bargaine be made after the recouery of the land, and not depending the suit. And if a man doe bring an action against another, and do recouer the thing in question against the defendant

what is champerty, & what not.

9. H. 6. 64.

Fitz. Champ. 5. 30 Ass. p. 5. 8. Ed. 4. 13.

13. H. 4. 19.

47 E. 3. 9. 7. E. 4. 15.

ſendant, yet the plaintife may haue an action of Maintenance againſt euery perſon that ſhall maintaine the defendant in that ſuit, though he hath loſt nothing by that Maintenance, for that the ſame Statute of 28. Edw. 1. is a prohibition of Champerty. And if a man doe bargaine for land before any ſuit is commenced for the ſame, and after a ſuit is proſecuted againſt the tenant of the land for the ſame, if the ſame tenant doe make a feoffement or other aſſurance to the purchaſor, according to his bargaine of the ſame land, during the time of the ſame, yet this is no Champertie: For in this caſe the ſeller did not aſſure this land to the purchaſor, vpon couenant to haue Maintenance, but to performe his former bargaine, and the ſale was before the ſuit, though the performance thereof was after. And if a man doe make a feoffement of land to others to his owne vſe, during the time that a ſuit is depending for the ſame land, this is no Champertie: for the feoffement was not made to haue Maintenance in that ſuit, but to haue the poſſeſſion of the land to be transferred to others, and yet to the ſame vſe it was before. And a man may giue land to his ſonne in Frank-marriage, or for the terme of his life, during the time that a ſuit is depending againſt him of the ſame land, and it is no Champertie: for that the words of the ſtatute of Anno 28. Edw. 1. be, But it is not intended, that a man ſhall not haue counſell of pleaders, and of learned men for his fee, nor of his next friends: and the father is bound to relieue and help his ſonne as much as he may, and it is no Maintenance nor Champertie in him to aſſure the land to his ſonne, nor in the ſonne to take it. And in a writ of Champertie it is a good plea for the defendant to plead, That he purchaſed the land of him who recouered it for his money, and not for Champertie to maintaine the ſuit. And if a man doe make a leaſe for the terme of life of land, and after the tenant for life is impleaded for the ſame land, and depending that plea, the tenant for life doth ſurrender his eſtate for life to him in Reuerſion, this is no Champertie.

Fitz. Champ. 15.

8. E. 4. 13.

6. E. 3. 33.

21. E. 3. 52.

Fitz. Champ. 14.

Maintenance by Embracery.

6 Maintenance may alſo be committed in other ſortes then be aforeſaid, viz. by Embracors, and by Iuries. By the Statute of Anno 33. Ed. 1. an Embracor is deſcribed to be one that commeth to the barre with the party, and ſpeaketh in the matter, and is there to ſuruey the Iurie: And he is accounted an Embracor, who will threaten the Iurie, or any of them, if they do not giue their verdict by his direction: and he alſo, who is a procuror of a Iurie to appeare, that is commonly called a leader of Enqueſts. And the puniſhment of Maintenance both in Embracors and Iurors, is aſſigned by the ſtatutes of Añ 34. Ed. 3. and Añ 38. Ed. 3. whereby it is ordained, That if any Iuror ſworne in Aſſiſes, or other Enqueſts, to be taken betweene the King and the party, or betweene party and party, doe by himſelfe, or any other take any thing of the plaintife, or defendant, to giue his verdict, and thereof is attainted at the ſuit of the party, which will ſue for himſelfe, or for the king (or of any other perſon entring his plaint by Bill immediatly before the Iuſtices before whom the Iurie was ſworne) the ſaid Iuror ſhall pay tenne times ſo much as he hath receiued. And all thoſe which be Embracors to lead and procure ſuch Enqueſts in the Countrey, to make a gaine and profit thereof, ſhall be puniſhed as the Iurors. And if the Iuror or Embracor ſo attainted haue not wherewith to make recompence in forme aforeſaid, he ſhalbe one yeare impriſoned, which impriſonment ſhall not bee pardoned for any fine: and the party grieued may haue his action before other Iuſtices, if he will.

St. 33. Ed. 1.

Fitz. Nat. Br. 171.

13. H. 4. 19.

St. 34. E. 3. 8. 38. Ed. 3. 12.

Maintenance by Iurors.

The penalty of Maintenance in Iurors and Embracors.

But

But no Iuſtice or other officer ſhall inquire of office vpon any of the points of this Statute, but onely at the ſuite of the partie, or of others, as is aforeſaid. See Periurie 18.

7 Vpon the foreſaid Statutes of 34.Ed.3. and 38.Ed.3. is the writ of Decies tantum grounded. By the which writ the party grieued by any ſuch Maintenance and taking of money by a Iuror or Embracer, ſhall recouer againſt the offendor ten times ſo much as he hath taken, whereof the King ſhall haue the one halfe, and the ſame party who doth recouer, the other halfe. And a man may haue one writ of Decies tantũ againſt all the Irors of an Enqueſt, if they all did take money to giue their verdict, or againſt ſo many of them as did take money. And ſo he may haue one writ againſt the Embracers and the Irors, and recouer againſt euery of them tenne times ſo much as he receiued to giue his verdict, or to embrace: as if one of them take ten ſhillings, another twenty ſhillings, a third 5. pounds &c. and the damages ſhall be tared againſt euery of them ſeuerally. And therefore when one action is brought againſt ſeuerall Irors, for taking of money to giue their verdict, euery of them muſt plead his plea ſeuerally, and by himſelfe. If a Iuror doe take money to giue his verdict on the one part, if after he doth giue no verdict, or if he with his companions doe giue a true verdict, or ſuch a verdict as the party who bringeth the writ receiueth no hurt thereby, or if the plaintife be nonſuite, yet a Decies tantum may be brought againſt him: For it is not the giuing of the verdict which the Law doth reſpect, and puniſh, but the taking of the money to giue his verdict, and ſo to doe an vnlawfull act. But otherwiſe it is of an Embraceor, for if he take money to embrace, and yet doth not embrace, no action will lye againſt him: for he is no Embraceor, if he do not embrace. In a writ of Decies tantum, if the Iurie find, that one of the Iurie in the former Iſſue did take land for fortie pounds leſſe then it was worth, to giue his verdict, the ſame Iuror ſhall forfeit to the King and the party tenne times ſo much, viz. foure hundred pounds. And ſo ſhall the Embraceor forfeit tenne times ſo much, if he hath the land for leſſe then it is worth, after the Iurie hath giuen their verdict by his meanes or perſuaſion. And the one moitie which is due to the King in this caſe, according to the foreſaid Statute of Anno 38. Ed. 3. is a fine to the King for his offence, and not a debt to the King, and therefore the party grieued ſhall be firſt ſatiſfied of his moitie, and after him the King ſhall be payed in the receit of the Exchequer. Men that be learned in the Law, may for their fées ſpeake to the Iurie, and enforce their clients euidence vnto them ſo much as they can openly, vpon the triall of the cauſe: But they may not otherwiſe labour to the Iury to giue their verdict, and receiue money to that end, for then they be Embraceors. If he that is the party grieued, who may haue againſt any Iuror a Decies tantum for taking of money, do releaſe to the ſame Iuror all actions, this will not auaile the ſame Iuror, for by the ſaid ſtatute any perſon that will, being a ſtranger, may haue a Decies tantum againſt the ſame Iuror. But if the king doe releaſe before any ſuit commenced, it is a good barre againſt all perſons, as it is in other popular actions: and yet if the party hath begun his ſuit the kings releaſe will not diſcharge it, but for his owne part: for that which was before popular, is now become his priuat action: and a condemnation or acquitall at his ſuit is a diſcharge againſt the King and all others.

Maintenance puniſhed by a Decies tantum.

40.E.3.33. 41.E.3.9. Fitz. Decies tantum 10. 21.H.6.20. 37.H.6.31. 41.E.3.9. 41.E.3.15. Fitz. Decies tantum 12. 44.E.3.36. 6.E.4.5. 1.H.7.3. 5.E.4.2.

8 There is an other kind of Maintenance by Irors, that the law doth

Maintenance by Ambidexter.

prohibit, which is, when a Juror doth take mony or other thing of the one part & the other, who is commonly called Ambidexter: for the punishmēt of whom, by a statut made Añ 5. E. 3. it was ordained, That if any Juror in Assises, Juries or Enquests, take of the one part, & of the other, & be thereof duly attainted, he shal not after be put in any Assises, Juries, or Enquests, but shalbe sent to prison, & further punished at the kings pleasure. And the Iust. before whom such Assises, Juries, & Enquests shall passe, haue power to inquire and determine, according to this statute. As this greedie Ambidexter doth offend two Laws, so it is prouided to impose two seuerall punishments vpon him: vpon a writ of Decies tantum brought against him, he shall be compelled to pay to the king & the party grieued ten times so much as he hath receiued to giue his verdict, according to the statute of 38. Ed. 3. And shalbe no more put in Enquests, but sent to prison, and punished at the kings pleasure, according to the foresaid statute of Añ 5. E. 3. But no person shall be punished according to the said statut of Añ 5. Ed. 3. vpon any writ of Decies tantū brought against him, but only vpon an Inditment at the kings suit. If any Juror doe take money of eyther of the parties to a suit after his verdict giuen, for giuing his verdict, without making couenant therefore before hand, he shal not be punished according to any of the foresaid statutes of Añ 5. Ed. 3. 34. Ed. 3. or 38. Ed. 3. for he is out of the danger of the writ of Decies tantum, and he shall not be imprisoned by force of the statute of Añ 5. Ed. 3. for he did not take mony contrary to the meaning of that statute: But in that case he shall pay a fine to the king.

St. 5. E. 3. 10.

44. E. 3. 39. Fitz. Dec, tantum 12.

39. Ass. p. 19.

9 As it is Champertie, and therewith Maintenance, to haue part of the land or thing in variance: so it is Maintenance, to take part in any quarrell depending in suit in the Kings court, or to worke any fraud whereby iustice may be hindered; as it appeareth by the statute of West. 1. whereby it is ordained, That if any Clerke of the kings, or of any Iustice, do receiue the presentment of any Church, for the which any plea or debate is in the K. Court, without the kings speciall licence, he shall lose the Church and his seruice. And if any Iustices or Shiriffes Clerke, take part in any quarrell depending in the Kings Court, or doe worke any fraud, whereby common right may be delayed or disturbed, he shall lose his seruice, and be further punished, if the Trespas doe require. And after by a statute made Anno 32. H. 8. there was a greater penalty imposed vpon those who shall be maintainors of suits: By which statute it was ordained, That no person or persons whatsoeuer, shall vnlawfully maintaine, or cause or procure any vnlawfull maintenance in any action, suit, demaund, or complaynt in any of the Kings Courts of the Chauncerie, Starre-chamber, White hall, or elsewhere, within any of the Kings dominions of England, or Wales, or the marches of the same, where any person or persons haue authoritie, by vertue of the K. Commission, Patent, or Writ, to hold plea of lands, or to heare, examine, or determine any title of lands, or any matter of witnesse, concerning the title, right, or interest of any lands, tenements, or hereditaments: Or shall vnlawfully retaine for maintenance of any suit or plea, any person or persons, or embrace any freholders or Jurors, or suborne any witnesse by letters, rewards, promise, or by any other sinister labour or meanes, for to maintaine any matter or cause, or to the disturbance or hinderance of iustice, or to the procurement or occasion of any maner of Periurie, by false verdict, or otherwise, in any of the Courts aforesaid, vpon paine of forfeiture for euery such offence x. pounds to the king and Inl. to be recouered by him that will sue for the same in any of the kings

Courts

Westm. 1. 3. Ed. 1. 28.

St. 32. H. 8. 9.

The penalty for maintaining of suits.

Retaining for maintenance, or imbracing, or suborning of Jurors.

Courts of Record, by action of Debt, Bill, Plaint, or Information wherein no W. E. P. &c. if the suit be commenced in any of the Kings Courts within one yeare next after any such offence committed, or else not.

10 As it is Maintenaunce to haue by agreement part of the land in variance, or part of the gaines of the suit in question, so is it Maintenance to buy a pretenced right or title of another, of or to lands or tenements, whereof the seller hath no possession, for it is oft times the cause of Subornation of witnesses, procurement of Periurie, and of the subuersion of iustice: For the redresse whereof, by the last specified Statute of Anno 32. H. 8. it was first enacted, That all Statutes heretofore made concerning Maintenaunce, Champertie, and Embracerie, or anie of them, then standing in force, should be put in due execution, according to the effects of the same. And also by the same Statute it was ouer that ordained, That no person or persons, of what estate, degree, or condition soeuer he or they be, shall bargaine, buy, or sell, or by any meanes obtaine, get, or haue any pretenced rights or titles, or take promise, graunt, or couenant to haue anie right or title of anie person or persons, in, or to anie Mannors, Lands, Tenements, or other Hereditaments: but if such person or persons which shall so bargaine, giue, graunt, couenant, or promise the same, their auncestors, or they by whom he or they claime the same, haue beene in possession of the same, or of the reuersion or remainder thereof, or taken the rents or profites thereof, by the space of one whole yeere next before the said bargaine, couenant, graunt, or promise made, vpon paine that hee that shall make any such bargaine, sale, promise, couenant, or grant, shall forfeit the whole value of the Lands, Tenements, or Hereditaments, so bargained, sold, promised, couenanted, or granted, contrary to the forme of this Act. And the buyer or taker thereof knowing the same, shall also forfeit the said value of the said Lands, Tenements, or Hereditaments, so by him bought or taken, as is aforesaid: the one halfe of the said forfeitures to be to the king, and the other halfe to the party that will sue for the same, in anie of the Kings Courts of Record, by action of Debt, Bill, Plaint, or Information &c. wherein no W. E. P. or J. &c. if the suit be commenced by A. B. P. or J. in any of the Kings Courts, within one yeare next after any such offence committed, or else not. Prouided alwayes, That it shall be lawfull to any person or persons, being in lawfull possession, by taking of the yearely ferme, rents, or profites of any Mannors, Lands, Tenements, or Hereditaments, to buy, obtaine, get, or haue by any reasonable meanes the pretended right or title of any other person or persons to be made to, of, or in any such lands, tenements, or hereditaments, whereof he shall be so in lawfull possession: Any thing in this Act &c. notwithstanding.

Stat. 32. H. 8.

Maintenaunce by buying of pretenced titles.

The possessor purchaseth a pretenced title

22. & 23. Eli. Dyer. 374. 6. Ed. 6 Dyer. 74. Plo. Com. 87

11 If a man make a lease or promise a lease for the terme of certaine yeers to another of land, contrary to the foresaid Statute of Anno 32. H. 8. viz. of those lands, whereof neither he himselfe, nor any of his auncestors, nor any by whom he doth claime the same land, haue beene in possession of the same, nor of the reuersion, nor remainder thereof, nor taken the rents or profits thereof by the space of one whole yeare before the said bargaine, graunt, and demise made, he is within the daunger of the foresaid statute of An 32. H. 8. as well as if he had made an estate for the terme of life, in taile, or in fee simple of the same land: for that the scope and effect of the statute is vtterly to root out maintenaunce, and bargaines and promises of Titles, for the which the words

what is selling of a pretenced title.

of

of the Statute be, That no person shall sell or buy any pretenced rights or ti-
ties. And a lease is no more lawfull for one yeare, than for an hundred yeares:
and some man will be as ready to maintaine to haue a lease for yeares, as to
haue a greater estate. Wherefore he that doth make a lease for yeers, or make
promise of a lease for yeares of lands, whereof he hath but a pretenced right or
title, shal forfeit to the King and him that will sue, the whole value of the inhe-
ritance of the land, aswel as if he had bargained and sold the fee simple thereof.
But it is specially to be respected in that case, that hee hath but a pretenced
right or title at the time of his lease made: for if he hath a good title in the same
land at the time of the said Lease, then is he not within the danger of the said
statute, though neither he himself, nor any of his ancestors, nor any by whom
he doth claime the same land, haue beene in possession thereof, nor of the reuer-
sion or remainder thereof, nor haue taken the rents or profites thereof by the
space of one whole yeare before the said lease made: For if a man do enter in-
to lands that be holden of him, for an alienation in Mortmaine: Or if hee doe
recouer lands by a reall action, he may sell the same land, or make a lease of
the same land within a yeare after the Entrie or Recouerie, though neither
he, nor his auncestors, nor they by whom hee claimeth the same land, haue
beene in possession thereof, nor taken the Rents or Profites thereof, by the
space of one whole yeare before. And so it is, if a man doe morgage his land
for diuers yeares, vpon condition of repayment of money at a certaine day,
or vpon any other condition. If after hee doe redéeme his land, he may sell it,
or lease it within one yeare after, though hee hath not beene in possession there-
of, nor taken the Rents or Profites thereof by the space of many yeares be-
fore: For the meaning of the Statute is not to restraine the bargaining, buy-
ing, or selling of good and cleere Rights, but of pretenced Rights and Titles.
And this pretenced Right or Title is, when one man is in possession of lands
or tenements, and another man who is out of possession of them, doth claime
them, or doth sue for them: for hee is not aptly said to haue title to land, who
is in possession of the same. And therefore if he that is out of possession of land,
doth bargaine, sell, or make any Agreement, Couenant, or Promise to depart
from the same land, or to make any assurance thereof, after he shall recouer
the said land, hee is within the daunger of the said Statute, whether he hath
a good title to the same land, or not. And so it is, if one who hath a pretenced
Right or Title to copiehold lands, doth bargaine and sell it to another, hee is
within the compasse and daunger of the foresaid Statute of Anno 32. H. 8.
For the words of the statute be, If any doe bargaine, buy, or sell &c. any right
or title in or to any lands or tenements: So that those words (any right or ti-
tle) doe extend to all manner of rights or titles, and consequently to copiehold
lands. And seeing a great part of the land of the Realme is graunted by copis;
Therefore the meaning of the makers of the said Statute of Anno 32. H. 8.
was to include them, for the auoyding of Suites, Maintenance, and Cham-
perty, and not to leaue all copiehold estates to the mischiefes mentioned in the
preamble of the said Act.

Br. Maint. 38. 6. Ed. 6.

What is a pretenced ti-tle.

Co. lib. 4. 26.

Maintenance by giuing of Liueries and retaining.

12. Giuing of Liueries, Badges, Signes, and Tokens, and retaining
of vnnecessarie seruants, is an euill budde springing out of the foresaid
Branch of Maintenance, being put in practise by men of great countenance,
authoritie, and estate, and it hath beene from age to age accounted a meane
to stirre vp quarrells, to bouister Suits, to procure Periurie, and to sub-
uert iustice. And therefore the chiefe Gouernours of this Realme haue en-

deuoured

denoured by many Acts of Parliament to repreſſe or ſnibbe it: as by the Sta-
St. 1, R. 2. 7 tute of Anno 1. Ric. 2. and 7. Hen. 4. it was ordained, That if any perſon
7. H. 4. 14 ſhall giue any Chaperons, Hats, or ſuch like Liueries to any man for main-
tenance of quarrells, or other confederacies, he ſhall forfeit an hundred ſhil-
lings for euery ſuch Liuerie: and he which receiueth ſuch Liuery, ſhall forfeit
Stat. 8. H. 6. 4 fortie ſhillings. And by the ſtatute of 8. H. 6. it was enacted, That if any per-
ſon of his owne authoritie and proper coſts doe buy, or weare for his clothing
any Clothes or Hats, called Liueries, of the ſort or ſuit of any Lord, Ladie,
Knight, Eſquire, or other perſon, to haue ſupportation, ſuccour, or maine-
nance in any quarrell, or in any other matter, and being thereof lawfully con-
uict, he ſhall forfeit forty ſhillings, and be one yeare impriſoned. And by the
Stat. 1. H. 4. 7 ſtatute of Anno 1. H. 4. it was prouided, That if any which is a Knight, or
Eſquire, meniall of the kings, or who is of his retinue, to whom his Ma-
ieſtie ſhall giue his honourable Liuerie, doe weare his ſaid Liuerie in the coun-
trey or Countie where he is reſiant or dwelling, or in any other place of the
Realme out of the kings preſence (ſauing in going or comming from the
kings houſe) and is thereof duly attainted, he ſhall loſe his Liuerie, and for-
Stat 8. Ed. 4. 2. feit his fees for euer. And by the ſtatute of Anno 8. Edw. 4. it was eſtabliſhed,
Stat. 1. H. 4. 7. That no perſon by himſelfe, or any other for him, ſhall giue any Liuerie, or
Badge, or retaine any perſon, other than his meniall Seruant, Officer, or
learned man in the one Law or in the other, by anie writing, othe, or pro-
miſe: And if any doe the contrary, hee ſhall forfeit for euery ſuch Liuerie or
Badge giuen an hundred ſhillings. And he which doth retaine or take of anie
other ſuch othe, writing, or promiſe, or is retained by Indenture, ſhall for-
feit an hundred ſhillings for euery moneth that any perſon is ſo retained
with him, by Othe, Writing, Indenture, or Promiſe. And euerie perſon
which is retained by Writing, Indenture, Othe, or Promiſe, for euerie
moneth that he is ſo retained, ſhall forfeit an hundred ſhillings. But this Act
ſhall not extend or be preiudiciall to any Gift, Graunt, or Confirmation made
of any Fee, Annuity, Penſion, Rent, Lands, or Tenements by the King, or
any others, to any perſon or perſons, for their counſell giuen, or to be giuen, or
for their lawfull ſeruice done or to be done (and for no other vnlawfull cauſe,
or vnlawfull intent) although the perſon to whom ſuch gift, graunt, or con-
firmation is made, bee not learned in the one Law or the other: Neither doth
it extend to any liuerie giuen at the Kings or Quenes coronation, or at the
inſtalment of any Archbiſhop, or Biſhop, or erection, creation, or marriage of
any Lord or Ladie of eſtate, or at the creation of any Knights of the Bathe, or
at the commencement of anie Clerke in an Vniuerſitie, or at the creation of
Serieants of the Law, or giuen by any Fraternity, Guild, or Myſtery corpo-
rat, or by the Maior, Sherife, or other chiefe Officer of any Citie, Borough,
Towne, or Port of this Realme of England for the time being, during that
time, for the executing of their office or occupation: nor to any liueries or bad-
ges, giuen in the defence of the king and his realme: nor to the Conſtable or
Marſhall for giuing any Badge, Liuerie, or Token, for any feats of armes to
be done within this Realme: Nor of any Wardens of the Marches toward
Scotland, for any Badge, Liuerie, or Token by them giuen, from Trent
northward, at ſuch time only as ſhalbe neceſſary to leuy people for the defence
St. 7. H. 4. 14 of the Marches. And by the ſtatute of anno 7. H. 4. it was ordained, That no
Congregation or Company ſhall make any Liuery of cloth, or of hats, at their
owne coſts, vpon paine that euery of the ſame Congregation or Companie,
ſhall forfeit forty ſhillings; except Guilds and Fraternities, and alſo people of

Artes

Artes and Sciences within Cities and Boroughes, which he ordained to a good intent.

Publishing, inquiring of, and punishing of maintenãce

13 As the wisedome of the Realme hath established from one age to an other the foresaid lawes and statutes, for the repressing or snubbing of Champerty, Embracery, buying of titles, and all other sorts of Maintenaunce: so hath she prouided trumpets to sound out and publish those laws into the ears, and sincke them into the hearts of all people: and secondly shee hath assigned watchmen and sentinels, to see who infringed those laws: and lastly she hath ordained Censors and Iudges to punish the offendors therein; as it appeareth by the before specified statute of anno 32. H. 8. whereby it is enacted, That the Iustices of Assise shall in euery County within their circuits, two times in the yeare, viz. in the time of their sittings for taking of Assises, or deliuerie of the Gaoles, cause open proclamation to be made, as well of the said statute, and euery thing therein contained, as also of al other statutes heretofore made against vnlawfull maintenance, champerty, embracery, or vnlawfull retainers, to the intent that no person hearing the same, should be ignorant, or misconsisant of the dammages and penalties therein contained. And by the former rehearsed statute of anno 8. E. 4. it is ordained, That euery person which will sue against any other, for any offence committed contrary to that statute, or any other of the premisses (viz. any other ordinance or statute before that time made against any persons for giuing or receiuing of Liueries or badges) before the kings Iustices in his Bench, before the Iustices of the Common Pleas, Iustices of peace in their Sessions, Iustices of Oyer and Terminer, and Gaole deliuerie, Iustices of the county Palantine of Lancaster and Chester, and in the Court of Yeramshire, and in the Court of the Bishop of Durham in the county Palantine of Durham, shall be admitted thereunto by the discretion of the said Iudges, to giue information for the King of any of the premisses committed within the iurisdiction of the same Courts. And euerie Informer shall be admitted to sue for the king and himselfe, action or actions vpon the same, by information in any of the said courts, against as many such offendors in one Bill of Information as liketh him, which Information shall be in stead of a Bill, or originall writ, wherein such Processe shal be awarded, as in an originall writ of Trespasse (but that in the Counties Palantine of Lancaster and Chester, nor in Duresme, no Exigent shall be awarded vpon any information, suit, or proces, to be made by force of this ordinance.) And if any be, or any Outlawrie thereupon pronounced, the same shalbe void without any Writ of Error. And if any of the offendors be present in any of the said courts, any of the Iustices may command him to be brought to answer to such bill vpon such information (by an othe first to be taken vpon a book by such informer, before some one of the Iudges, that his complaint is true) without any other or further processe therein. And euery of the same Iudges within his iurisdiction may by his discretion examine euery of the defendants vpon such information, and iudge him conuict as well by examination, as by triall, and the king shall haue the one halfe of the forfeiture (if it be not in a city or towne corporat, that hath the same by the grant of the king, or &c.) and the informer the other halfe, which also shall recouer his costs by the Iudges discretion, and execution thereof, as in recoueries vpon debt or trespasse, wherein no Essoine or Protection shall lie. And the maior, sherife, bailife, or other chiefe officer of euery city, borough, towne, or port within this realme, hauing power to heare and determine personal pleas in the court holden before them, or any of them, within

6 r. 32 H. 8. 9.

St. 8. Ed. 4. 2.

within any such towne, haue authoritie to receiue information of any person which offends in the premisses, and to heare and determine as well by examination as by triall, all things done concerning the same, by, or to the inhabitants within the iurisdiction of the same court, and to put this statute, for those offences prouided, in execution. And the king shall haue the one moitie of all penalties forfeited by the said statute, and the Informer and chiefe officers of such city, borough, &c. shal haue the other moitie, equally to be diuided betwixt them. And the said chiefe officers part shall be imployed to the vse of the said citie, borough, towne, or port, &c. And sithence the foresaid lawes and statutes, by one other statute ordained Anno 33. H. 8. and confirmed Anno 37. H. 8. it was enacted, That Iustices of peace at their Quarter Sessions, shall haue authoritie to inquire as well by the othes of twelue men, as by information giuen to them, by any person or persons, of defaults, contempts, and offences committed against the lawes and statutes made and prouided concerning, or in any wise touching retainers, giuing of liueries, signes, tokens, or badges, maintenance, embracerie, &c. and euery of them, and to heare and determine the said defaults, offences, &c. And vpon any information touching the penalties, or anie of them, to make Processe by Venire facias, one Capias, and an Exigent, vnder their seales, against euery such person and persons against whom such information or presentment shall be had, for the apparance before them in their Sessions, to answer to such information or presentment as shal be there made. And if the person or persons so accused by information or presentment shalbe conuicted vpon such information or &c. by confession, or verdit of xx. men, then the said Iustices haue power to giue iudgement, against euery such offendor so conuicted, of imprisonment, forfeiture of mony, or both of them, as are limited by the said seuerall Statutes for such offences whereof they are conuict, and to cause execution thereof to be made accordingly.

St. 33. H. 8. 10.

37. H. 8. 7.

Iust. of peace may inquire of and punish maintenance.

14 Maintenance, Champerty, buying of titles, and Embracery, haue bene accounted so offensiue and professed enemies to the iustice and peace of the realme, that though by the statute of Anno 18. El. it is ordained, That euery informer vpon any other penall Statute shall exhibite his suite in proper person, and pursue the same onely by himselfe, or by his Atturney in court: and that none shall be admitted to pursue against any person vpon any penall statute but by way of information or originall Writ, and not otherwise, nor shall haue any deputy at all. And that vpon euery such information which shall be exhibited, a speciall note shall be made of the very day, moneth, and yeare of the exhibiting thereof into any office, or to anie Officer which lawfully may receiue the same, without anie manner of antedate to bee made thereof: And that vpon euerie such processe shall be endorced aswell the parties name that pursueth the same processe, as also the statute vpon which the information in that behalfe made, is grounded, and that no informer or plaintife shall compound or agree with any person that shall offend, or shalbe surmised to offend against any penal statute, for such offence, but after answer made in Court vnto the information or suit in that behalfe exhibited or prosecuted: nor after answer, but by the order or consent of the Court, in which the same information or suit shall be depending: Yet in the said Statute of 18. El. there is a prouiso, that it shalbe lawfull for any person or persons grieued by means of any maintenance, champerty, buying of titles, or other embracery, to pursue vpon any statute prouided against maintenance, champerty, buying of titles, or embracery, as he or they might haue done before the making of the said Act.

St. 18. El. 5.

why the pursuing of maintenance is left out of the statute of 18. El.

Which

Which prouiso was made to the end that all persons grieued by reason of any maintenance, champerty, buying of titles, or embracery, should be left at liberty to pursue and chasten the offendors therein, by all such meanes as former lawes haue authorized them, and not be restrained by any of the ordinances or articles before rehearsed, for that the said offences were by the makers of the said statute adiudged to be greater impediments and obstacles to the execution of iustice, than other penall statutes were.

Assurances to haue maintenance void.

15 As the policie of the realme hath deuised the foresaid popular actions and suits to enable euery person that will, in diuers cases to pursue and prosecute maintainors, champertors, buyers of pretenced rights, &c. to the intent the sooner to root out and extirpat those offendors who indeuor to wrest the execution of lawes out of their due course, to subuert iustice, and thereby to hinder the peace of the realme: so hath it in some cases gone further, and ordained, that some assurances made for maintenance, shalbe presently void: as it appereth by the statute of anno 8. H. 6. whereby it was enacted, That if any person after his entry into lands or tenements, holden with force, doe make a feoffment or other discontinuance to any Lord, or other person, to haue maintenance, or to toll and defraud the possessor of his recouerie in any wise: If after in an Assise, or other action therof to be taken or pursued before the Iustices of Assise, or other the kings Iustices whatsoeuer they be, by due inquiry thereof to be taken, the same feoffements and discontinuances may be duly proued to be made for maintenance, as is aforesaid, that then such feoffements or other discontinuances, so as before made, shalbe void, and holden for none. And by the statute made Anno 4. H. 4. it was established, That if any man, great or small, of what estate or condition they be, make any forcible entry in his owne right, or to his owne vse, or in anothers right, to his vse, by the way of maintenance, and thereof is attainted at the suite of the party grieued, he shall be one yeare imprisoned, and pay to the party grieued his double dammages: And also he shall answer to the partie grieued damages for his goodes and cattels, if vpon the said forcible disseisin he take away any.

Lands gotten by force assured to haue maintenance.

stat. 8. H. 6. 9.

Lands forcibly gotten by maintenance.

stat. 4 H. 4. 8

What maintenance is punishable, and what iustifiable.

16 As by the before mentioned statute, maintenance, champerty, embracerie, and buying of titles, be in generall termes decipthered, together with their generall penalties, so haue the learned Iudges and Sages of the Law expounded the particular braches of euery of those statutes as they grew in question, and were prosecuted in suit before them, and also resolued what maintenance is punishable, and what iustifiable, who may pursue an action, writ, bill, or information &c. of maintenance, champerty &c. against whom the same is to be brought, for what offence or cause the same is maintenable, what pleas are to be pleaded to the writ, or in bar of the said actions, writs, informations &c. & what iudgement shall ensue thereupon. As, euery champerty is an vnlawfull maintenance, prohibited by the foresaid stat. of West. 1. and West. 2. & punishable according to the before rehearsed stat. of an 28. E. 1. & euery champerty is a maintenance, and the party grieued may haue as wel a writ of Maintenance as of Champerty, for by that means the champertor hauing bargained to haue part of the land or thing in question, doth oft times moue and further the suit, suborneth witnesses, corrupteth the Iury, and so subuerteth iustice: but there must be a suit depending before it can be adiudged maintenãce in any sort: for if one man wil giue mony to another to begin & prosecute a suit against a third person, this is no maintenance, for that this money was giuen when there was

9. H. 6. 64. 32. 28. E. 1. 11.

1. H. 6. 55. 8. H. 5. 8.

10.Ed.4.19. 30.Ed.3.3. was no ſuit depending: and if there be a writ brought and neuer returned, it is no maintenance.

18.E.4.20. 28.H.6.6. 17 If there be a ſuit depending betweene two, and they do ioyne an iſſue, which is tried by xy. men, & found for the plaintife: in this caſe the defendant cannot haue an action of maintenance againſt the ſaid Iurors, or any of them, for this verdit giuẽ, for that they gaue their verdit according to their euidence, & their knowledge of the truth of the matter: & beſides they did not thruſt theſelues into that cauſe, but were compelled to appeare by an ordinary courſe of law, being impanelled & returned by the Shirife, or ſome other lawful officer: but if after the verdict giuen any of the Jury will ſolicit or labor to the Judge or Judges of the court where the ſaid ſuit is depending, to giue iudgement for the pl. then the def. may haue an action of Maintenance againſt him, for that the ſame iudgement is a thing wholly belonging to the office of a Judge, and not of a Juror, & therfore he doth therin intermeddle with another mans office and another mans cauſe, more than he hath to do or may iuſtifie, and ſo hath committed vnlawful maintenance.

No maintenance in a Juror for giuing his verdict.

Maintenance by a Juror ſuing for iudgement.

17.E.4.5. 18.Ed.4.4. 18 If a Jury be charged to inquire of a matter in iſſue, one Juror may perſuade his companions, or any of them, to paſſe for the pl. or def. as he conceiueth the truth of the cauſe to be, or as their euidence doth induce them, & this is no maintenance: but if one of the Jurors will giue or promiſe money to another of his fellowes, to giue his verdit for the pl. or def. this is vnlawful maintenance, though he doth wage him to giue his verdit according to truth, and right of the cauſe in iſſue.

Maintenance in a Juror.

22.H.6.5. 13.H.4.19. 19 If a man of great authoritie in a country will in the preſence of a Jury, and the ſtanders by at the tryal of an iſſue ſay openly, that he will ſpend mony in the cauſe in queſtion, in the behalfe of the pl. or the def. or that he will giue mony to labor the Jury, or wil ſpeak other great or high words, in fauor of one of the parties, this is vnlawfull maintenance in him, though he do ſpend no money in that cauſe, nor doth labor the Jury therein: for it may be, that when the Jury doe by his words know his meaning, they dare not in reſpect of his authority or greatnes in that countie, giue their verdit otherwiſe thã he would haue them. And for the preuention of that kind of maintenãce, by a ſtat. made An 20.R.2. it was ordained, That no L. or other of the country, great or ſmal, ſhall ſit vpon the bench with the Juſt. of Aſſiſe in their Seſſions, in any of the Shires of England, vpon pain of a great forfeiture to the K. neither the Juſt. ſhal ſuffer the contrarie to be done. And in like ſort if a man of great authority in the county where an Iſſue is to be tried, hauing nothing to do in that cauſe, doth come to the bar with the pl. or def. that is one of the parties to an Iſſue that is then to be tryed, & ſtandeth by him, this is an vnlawfull maintenance in him, though he neither doth, nor yet ſpeaketh any thing in the matter: for his preſence & companie with the one party, doth ſhew to the Jury his particular affection to the ſame party, & doth ofttimes induce them to fauor, as much as labour and perſuaſion by words could doe. And though the Jurie doe not reſpect him, but giue their verdit for their other partie to that ſuit, according to their euidence & the truth of the cauſe in queſtion, yet he hath done what in him lyeth to the contrarie.

Maintenance by ſpeaking of words.

31.20.R.2.13 None ſhal ſit with the Juſt. of Aſſiſe on the bench.

32.H.6.6. Maintenance in comming to the barre with one of the parties.

Maintenance by giuing of money to labour a Iurie.

20 And ſo it is if two be in ſuite, and do ioyne in iſſue, and the Maſter of one of the parties to that iſſue, or any other will deliuer money of his owne to a ſtranger, to labour the Iury impanelled to try that iſſue, to giue their verdit for his ſaid ſeruant or friend: this is maintenance vnlawfull in the Maſter or other, though the party to whom the money was giuen, did neuer deliuer it to the Iury, nor did not labour vnto them in ſuch ſort as hee was directed, or though the Iury did giue their verdict againſt his ſaid ſeruant: for when the Maſter had deliuered the money to the ſtranger, and told him to what purpoſe he ſhould vſe it, he had done as much as he could do in that ſuite, to hinder the courſe of iuſtice, though his direction tooke no ſucceſſe according to his deſire. And alſo it is vnlawfull maintenance, if one giue money to a man that is impanelled of a Iury to giue his verdict on the one ſide, though that party impanelled doth not appeare, or do appeare, and is drawn out by challenge or otherwiſe. And it is maintenãce vnlawful, if one do threatẽ to kill or beat a Iuror, if he do not giue his verdict for the one part to that iſſue, which he doth name, though the ſame Iuror do otherwiſe. 21.H.6.15. 22.H 6.50. 23.H 6.7. Dyer fol 95. 22.H.6.6.

What is maintenance in a Witneſſe, and what not.

21 If a Iury do come to a mans houſe, & deſire him to informe them of the truth of a matter whereof they do doubt, & he doth informe them thereof, this is iuſtifiable: But if one do come to a Iury, or of himſelfe do labour to informe thẽ of the truth of a cauſe in queſtion, this is maintenance vnlawful, & therefore punishable. And ſo it is, if the Court be informed by the plaintife or defendant when an iſſue is to be tried, that there is a man at the bar, or in that place, who doth know the truth of the matter in iſſue, & doth deſire that the ſame man may be examined by the Court to teſtifie the truth of that cauſe in queſtion to the Iury, & the Court doth cauſe him to be called to teſtifie his knowledge therin, & he at the commandement of the Court deliuereth that which hee doth know in that matter, this is maintenance iuſtifiable: But if the ſame party will come to the bar of his owne head, & teſtifie for the plaintife, or the defendant, this is vnlawfull maintenance, & he may be puniſhed therefore. 28.H.6.6.

Maintenance by procuring of an indictment.

22 If one man do labour to indict another, by force whereof he is indicted: in this caſe he that is indicted may haue a writ of Maintenãce againſt the procurer of that indictment, & yet this is no quarrell, but it is a taking of a part, & ſo prohibited by the ſtat. of Aũ 1.E.3. & it is in the nature of an action betweẽ the K. & the party indicted: & the foreſaid ſtat. is generall, that it ſhall not bee lawfull to any perſon great or ſmall, to maintain quarrels, or to take parts, to the let or diſturbance of the Common law. 22.H.6.6. St.1.E.3.14.

What is maintenance in a mainpernor.

23 If a man be arreſted, indicted, or ſued, ſo that he is compelled to become bound with mainpernors for his apparãce, the mainpernor may come into the Court & ſee the apparance of the ſame party recorded, and iuſtifie the ſame in a writ of Maintenance brought againſt him: but he cannot retaine or intreat a man learned in the law to be of counceli with the principall partie, nor meddle further in that cauſe, than to ſee the mainprize performed, & himſelf diſcharged. 34.H.6.25. 14.H.6.6. 18.E.4.12.

Maintenance in reſpect of his intereſt in the land.

24 Euery perſon that hath any intereſt in land, may meddle and maintain him who is impleaded for the ſame land, and not be puniſhed therefore in a writ of Maintenance: As if tenant for terme of life, or in taile of land, bee impleaded for the ſame land, or any part thereof, he in the reuerſion or remainder thereof, may at his owne charges maintaine him in that ſuite, for the ſafegard Bro. Maint. 53

of

of his owne eſtate; for it is in a ſort his owne caſe, and the defence of it is to his owne benefit, and the euiction to his owne diſheritance. But this maintenance, muſt be after tenant for terme of life hath attorned vnto him in the reuerſion: for if he maintaine the ſuit before, it is puniſhable in him. And ſo it is, if a man being ſeiſed of land, hath iſſue a daughter, who is maried to another, if the father in law be impleaded of that land in a reall action, the ſonne in law may maintaine him at his owne charges; for that by poſſibilitie that land may after the deceaſe of his father in law deſcend to his wife, and ſo come to him in her right. But if the daughter dye without iſſue of her body begotten by the ſaid husband, before the ſaid ſuit commenced, then the ſonne in law cannot maintaine the father in law in that ſuit: Neither can he maintaine him during the life of his wife, if an action of Debt, couenant, account, or any other perſonall action be brought againſt him: for he is neither to take benefit or loſſe by any of thoſe ſuits. And if a man ſeiſed of land make a leaſe for certaine yeares of the ſame, and after a ſuite is commenced betweene the ſaid leſſee for yeares, and a ſtranger, touching the ſame land, or any part thereof, the leſſor may giue euidence for the leſſee, vpon the triall of the cauſe in queſtion, or otherwiſe may maintaine him in that ſuite, at his owne charges, for it tendeth to his owne priuat benefit or loſſe. And in ſome caſe a man may maintaine a ſuit lawfully, though he be neither heire to the land, nor in poſſeſſion, reuerſion, or remainder thereof: As if a man being ſeiſed of land, doe make a leaſe thereof to another, for the terme of the life of the leſſee, and after doth grant to a ſtranger, that if the ſaid tenant for terme of life doe dye during the ſame leſſors life, that then the ſame ſtranger ſhall haue and enioy the ſame land for the terme of xx. yeares after the death of the ſame tenant for life; if in this caſe the tenant for life be impleaded for this land, the ſame ſtranger may maintaine his ſuit for the ſauing of him owne eſtate for yeares, and yet he hath no certaintie, but a poſſibilitie of a terme for yeares, which peraduenture will neuer chance. And likewiſe in ſome other caſe a man may maintaine a ſuit lawfully, though he bee neither in poſſeſſion, reuerſion, remainder, or poſſibilitie of the thing in queſtion: As if a man be ſeiſed of a rent going out of another perſons land, to him and to his heires, and by his deed doth graunt the ſame to another and to his heirs, with clauſe of warrantie, and the tenant of the land out of the which this rent is iſſuing, doth atturne to the grauntee of this rent, if after the grauntee be impleaded of this rent, vpon tryall of the iſſue the grantor may come into the Court, and ſhew to the Iurors ſuch euidence as he hath to proue the title of this rent; and it is lawfull maintenance, and not puniſhable in him, though he was neither called into the Court by voucher to warrantie, or by Warrantia Chartę. And ſo might he haue done, if he had beene called to warrantie by any of the meanes aforeſaid, vpon a warrantie made of land or rent: for it is to preſerue himſelfe out of danger, & from recõpencing in valne of that whereof before he had made warrantie.

9.H.6.64. 14.H.7.2. 6.E.4.5. 19.E.4.3. 6.E.4.2. 39.H.6.20. 9.H.6.64. 11.H.6.49.

Maintenance in reſpect of his poſſibilitie.

Maintenance in reſpect of his warranty.

25 As it is in lands, and leaſes, ſo is it in rents, goods, and debts, for euerie perſon that hath intereſt in them may meddle, and maintaine and defend him who is impleaded or proſecuted by ſuit, or doth implead or proſecute by ſuit any other, for any matter or cauſe concerning him or whereupon he doth depend, ſo that the ſame ſuit doth tend to impeach, preiudice, or trouble his eſtate therein, or may redound to his benefit or profit, or may be a meane thereof: As if a man haue a rent charge in fee out of certaine lands, and another man hath in cuſtodie a boxe of writings concerning the ſame rent, and after

Maintenance in reſpect of his rent.

9.H.6.64.

he that hath the rent doth grant it to a ſtranger & his heirs, to the which grant the tenant of the land charged doth attorne; & moreouer, the grantor of that rent charge, doth grãt to the aſſignée of the ſame, that if he can recouer the ſame bore of writings, that then the ſame aſſignée ſhal haue them: If after this grant the grantor doth purſue a writ of Detinue againſt him that hath the cuſtodie of this bore of writings, he to whom the ſame rent charge was granted, may lawfully maintaine him in that ſuit, for that by promiſe he is to haue the ſame bore of writings, if it be recouered, for the preſeruation of his eſtate in the ſaid rent charge. And a Lord may maintaine his tenant if he be impleaded for his freehold, in reſpect of his rent & ſeruices ỹ he is to receiue & haue of him. And ſo it was before the Stat. of Vſes, made An 27. H. 8. if a man had made a feoffement of land to others, to his own vſe, the feoffor might maintaine the freehold tenant which held of his feoffées, in reſpect of the vſe which he hath in the rent and ſeruice of that tenant.

A Lord may maintaine his tenant. 11. H. 6. 47.

Maintenance in reſpect of debt.

26 And the ſame law is touching debt: As if A. do owe vnto B. xx. l. & C. do owe to A. xx. l. due by Obligation, & A. will deliuer vnto B. the ſame Obligation, in ſatisfaction of the xx. l. which he doth owe him: In this caſe B. may ſue an Action of Debt vpon this Obligation againſt C. in the name of A. & retaine an Attourney & learned counſell, & purſue & maintaine the ſuit, & ſo may A. for either of them hath intereſt in this debt: & one of them may aid, aſſiſt, & maintaine the other, to recouer his debt againſt C. in reſpect of their ſeuerall intereſts in the ſame debt. But if in this caſe A. had promiſed to B. but part of this debt, to haue proſecuted & maintained this ſuit, then it had bin Champertie, & vnlawfull maintenance in B. And the ſame law is, if one man be bound by Obligation to pay another man xx. l. to the vſe of a third man: the Obligée, & he to whoſe vſe the Obligation was made, may both meddle in the ſuite of this Obligation. 15. H. 7. 2. 34. H. 6. 30.

Maintenance in reſpect of his title to goods.

27 And ſo it is in goods: for he that hath any propertie, title, or lawfull poſſeſſion in goods, may maintaine a ſuite that is proſecuted againſt another touching the ſame goods: As B. brought an action of Debt againſt A. in London, and the Shirife returned that A. had nothing &c. Whereupon at the plaintifes ſurmiſe, certain goods of A. were attached in the hands of J. according to the cuſtome of the ſaid City, & a Scire fac. was awarded againſt the ſame J. to anſwer for thoſe goods, in which A. did maintain ỹ ſame J. in nominating vnto him a learned man in the law, to whom by his aduice he went for his counſell, & this was awarded maintenance iuſtifiable, for that the property of the goods ſo attached in the hands of J. were, & did continue in the ſaid A. So it is if one man do deliuer a déed or other writing to another to be kept, if a ſtranger wil bring an action of Detinue againſt him to whom the ſame was deliuered, the party who deliuered that writing, may lawfully maintaine him in that ſuit, for the intereſt he hath in the ſame writing. And yet the recouery of that writing would not haue bound him that did deliuer it, but he might haue had his action for the ſame againſt him that did recouer it. 39. H. 6. 20.

Maintenance in detaining of a writing deliuered in truſt.

Maintenance in reſpect of his ioynt intereſt with others.

28 As euerie perſon may lawfully maintaine any ſuit that ſhall be proſecuted, which concerneth his priuat and particular land, leaſe, rent, debt, or goods, ſo may he maintaine a ſuit touching any land, or other thing, which he hath ioyntly or in common with others: As the Parſon of a Church brought an action of Treſpaſſe againſt one of his Parithioners, for digging of his 18. E. 4. 2.

ground

ground, and ſpoyling of his graſſe: Whereunto the defendant pleaded, That the place where the Treſpaſſe was ſuppoſed to be done, is a Churchyard, conſecrate by the Biſhop, and that he, and all thoſe who are inhabitants in the ſame Pariſh, haue vſed to haue their Sacraments and buriall for their dead there: And that one of the inhabitants of the ſame Pariſh dyed, and he with others brought his bodie to the Church, and after made a graue for him in the ſame Churchyard, and there buried him, which is the ſame digging whereof the plaintife hath conceiued his action: Whereupon they were at iſſue: In this caſe it was agreed by all the Juſtices, that euerie inhabitant of the ſame Pariſh may lawfully giue euidence, and otherwiſe maintaine this iſſue, though they be not parties thereunto: for euerie of them hath the like intereſt in the Churchyard, as the partie to that ſuit. And the ſame reaſon and law ſeemeth to bee, if there be a ſuit commenced betweene one or more inhabitants of a village, Hamlet, or Pariſh, and ſome other perſon or perſons, for a common or way, or for the digging of a pit of ſtone, marle, grauell, morter, ſand &c. vſed, or claimed to belong, or of right to bee due to the inhabitants of the ſame Village, Hamlet, or Pariſh; after iſſue ioyned touching the right or title of the ſame common, way, or pit, the reſidue of the inhabitants of the ſaid Village, Hamlet, or Pariſh, may aide, and aſſiſt their neighbour or neighbours partie to that iſſue, and it is lawfull maintenance, for it tendeth to the benefit or preiudice of all the ſaid inhabitants, and is in a ſort their owne caſe.

Maintenance by all the inhabitance of a pariſh.

32.H.6.35. 21.H.6.15. 29 In a Writ of Maintenance the plaintife ſuppoſed that the defendant did maintaine one A. in an action which the plaintife brought againſt the ſayd A. Whereunto the defendant pleaded, That the ſame A. was a poore man, and had nothing to defend himſelfe in the ſuit which the plaintif had commenced againſt him, and that the defendant of his almes gaue him xx. s. which is the ſame maintenance. This was allowed a lawfull maintenance, and iuſtifiable for any man to do: for whereas vnlawfull maintenance is in caſe when a man doth maintaine a ſuit, to haue the whole or parcell of the land or thing in queſtion, or to haue ſome other conſideration to further or vphold that ſuit, or where a man hauing nothing to do, nor colour to meddle, yet wil vndertake for euill will to maintaine that ſuit in queſtion; this giuing money to a poore man to defend his right, is not to either of the intents aforeſaid, but beſtowed vpon a charitable diſpoſition, to ſearch out truth, and further the execution of iuſtice: which appeareth by the ſtat. of 11.H.7. wherin the king and the whole parliament willing indifferent iuſtice to be miniſtred, according to the common laws, as wel to the poore as to the rich, and perceiuing that the poore were not of abilitie to ſue according to the law of the realme, for the redreſſe of their iniuries and wrongs, ordained, that the king himſelfe, the L. Chancellor, and ſome of each profeſſion towards the law, ſhould in a ſort aid and aſſiſt them: the words of which ſtat. be theſe, viz. Euerie poore perſon which ſhall haue cauſe of action againſt any other, ſhal haue by the diſcretion of the Chancellor, writs originall, & writs of Subpena, according to the nature of his cauſe, nothing paying to the K. for the ſeales of the ſame, nor to any perſon for the writing of the ſame writs. And the ſaid Chancellor ſhal aſſigne ſuch of the clerks, which ſhal vſe the making & writing of the writs, to write the ſame readie to be ſealed, & alſo learned Counſell & Attorneyes for the ſame, without taking any reward therefore. And after the ſaid writs be returned, if it bee before the King in his Bench, the Juſtices there ſhal aſſigne to the ſame poore perſon counſel learned by their diſcretions, which ſhall giue their counſell, nothing taking for the

Maintenance of a poore man in his ſuit.

9.H.6.64.

11.H.7.12

Proces, counſellors, and Attorneyes aſſigned to aid the poore.

ſame. And likewiſe the Juſtices ſhall appoint Atturneyes for the ſame poore perſon, & all other officers requiſit to be had for the ſpeed of the ſaid ſuits, which ſhall do their dueties, without any rewards for their counſels, helpe, and buſineſſe in the ſame. And the ſame law and order ſhalbe obſerued in all ſuch ſuits to be made before the K. Juſtices of his Common pleas, & Barons of his Exchequer, and all other Juſt. in Courts of Record, where any ſuch ſuits ſhall be.

Maintenance in reſpect of kinred or alliance.

30 As Maintenance in the caſes aforeſaid is lawfull and iuſtifiable, in reſpect of the parties priuat profit or intereſt in the thing in queſtion, or when it is done without malice or hope of profit, vpon a charitable diſpoſition, ſo is it in diuers caſes allowable in regard of the linke or bond of nature, whereby one perſon is by loue or dutie tied to another; as the father may maintaine his ſon and heire, and giue money of his owne in defence of him, or his title, or ſuit, for he is bound to find him: but ſo he may not doe for another kinſman. And the ſonne may maintaine the father and mother, and one brother another, and one neere kinſman another, and one ally another, in ſome caſes, and in ſome ſort: as if a man be impleaded, another that is his brother, or kinſmã, or of his alliance, may go to the bar with him, & ſtand by him, & comfort him: or he may ride to his counſell with him, or he may requeſt a man that is learned in the law, to bee of counſel with him in that cauſe: but he muſt not retaine that learned man, nor giue him any mony of his own to be of counſel, neither muſt he giue or promiſe money to the Iurors, or any of them, to giue their verdict for him, for then it is vnlawfull maintenance in him: & ſo it is in a ſtranger, who hath nothing to do in that cauſe; if he do go to the bar with him that is impleaded, or do ſtand by him of purpoſe, for to countenance the cauſe in queſtion, or doe requeſt a learned man in the law to bee of counſell with him, or do giue money to any of the Iurors for their verdict, this is vnlawfull Maintenance in him. And in the caſes aforeſayd, & all other caſes of Maintenance, this vnlawfull Maintenance is a continuall Maintenance during that ſuit, vnleſſe the party grieued do in the meane time releaſe the ſame. But if the ſame Maintenance be in reſpect of alliance, and that he who is ſuppoſed to be the maintainor, hath maried the daughter, ſiſter, neece, or other kinſwoman of one of the parties to the firſt ſuit wherein the maintenance was ſuppoſed to be, he muſt plead, that his wife was liuing at the time of the maintenance ſuppoſed to be: for if ſhe were then dead, the alliance betweene them is diſſolued, & then he hath no cauſe to maintaine that ſuit, but ſhalbe puniſhed as a ſtranger. And yet in that caſe, if the ſame woman hath any iſſue of her bodie begotten, who may inherit the land of him whoſe ſuit that husband of the deceaſed woman, and the father of that iſſue did maintaine, then is the maintenance lawful in any action brought againſt the ſame party, in reſpect of the kindred, & alſo of the benefit that may come to his owne iſſue. And in a writ of maintenance it is a good plea for the defendant to plead that he was gollip to him whoſe cauſe he was ſuppoſed to maintaine, for that gollipzie is in law adiudged a kind of affinitie.

Vnlawfull maintenance is continuall.

3 Edw. 4. 6.

14. H. 7. 2.

Maintenance in reſpect of gollipzie.

6. Ed. 4. 5.

Maintenance in reſpect the partie could not ſpeake Engliſh.

31 A. brought a writ of Maintenance againſt B. and ſuppoſed, that the ſame B. did maintaine L. in an action which he brought againſt the ſaid L. on the part of the ſaid L. Whereunto the ſayd B. pleaded, that the ſame L. was a Dutchman, borne out of the Kings obedience, and could not ſpeake the Engliſh or Latine tongue, and therefore being acquainted with B. the defendant, who could ſpeake the Dutch tongue, he deſired him to bring him to ſome man learned in the law, to be of his counſel in that ſuit, and to informe that learned

34. H. 6. 26. 6. Ed. 3. 33.

21. H. 6. 16. 14. H. 7. 2. 20. H. 6. 1. 19. E. 4. 3. 21. H. 6. 16.

9. Ed. 4. 3.

man

man of the truth of his cauſe in queſtion: whereupon hee brought him to one M. a man learned in the law, and opened the truth of his caſe vnto the ſaid M. as he receiued it from the ſaid L. in Dutch, which is the ſame maintenance. And this was adiudged a good plea in bar, & a lawfull maintenance: for it is a deed of charitie to aid & help him who could not help himſelfe. And the Dutchman had no meanes to helpe himſelfe, being but a ſtranger borne, & not vnderſtanding the Engliſh nor Latine tongue, but by the aſſiſtance and information of ſome Engliſh man.

9.Ed.4.5. 32 If a Serieant at law, an Apprentice, or other Councellor, being retained for his fee, doe giue vnto his Client the beſt counſell that he can for the recouerie or defence of the ſuit which he vndertaketh, according to the ordinarie courſe of the law: or doth inforce the euidence at the bar ſo much as he can, at the tryall of his clients cauſe, this is lawful maintenance, and iuſtifiable: But if he do pay or promiſe money to any of the Iury, to giue his verdict for his client, or do threaten any of them to be killed, beaten, or otherwiſe euil intreated, if they do giue their verdit againſt his client: or if he do ſpēd, or do offer to ſpend his own mony in defence of his clients cauſe, this is vnlawful maintenance, & punishable according to the before rehearſed ſtat. of Añ 1.R.2. for thoſe things he doth not as a lawyer, or according to the courſe of the law, nor by the warrant of law, but by iniuſtice, & vpon his owne corruption & wrong. But in the first ſpecified caſe, if a man that is not learned in the law, hauing himſelfe no intereſt in the cauſe in queſtiō, will declare to the Iury, or to the party, or to his counſell, the cauſe in queſtion, and the circumſtances therof, as a man learned in the law, this is vnlawfull maintenance in him though he do it as well as a man learned in the law: for hee doth it vpon maintenance, where the learned man doeth it for his fee. And ſo it is, if a man that hath land in ſuit or queſtion, will bring and ſhew his euidences & writings to a Nobleman, Gentleman, or other man of countenance, that is not learned in the law, & requeſt his opinion of them whether they will ſerue to defend his title in the cauſe in ſuit, and the party doth affirme them to be good & ſufficient in law, to iuſtifie and maintaine his cauſe, this is vnlawfull maintenance in that perſon who giueth this counſell, for by this meanes the partie may bee encouraged to proſecute or defend a ſuit which the law will not warrant him to effect. And if L. being a man that is not learned in the law, will publiſh that B. hath good right and title to the Mannor of D. whereas in truth B. hath no good right & title thereunto, but C. hath the only right & title to the ſame: in this caſe becauſe L. hath taken vpon him the knowledge of the law, and intermedled in a matter wherin he hath nothing to do, C. may haue an action vpon the caſe againſt the ſaid L. for ſlandering of his title, & ſhall recouer his damages againſt him, and his ignorance of the law will not excuſe him.

Maintenance in a profeſſor of the Law,

22.H.6.6.
21.H.6.13.
22.H.6.5.
Fitz.Maint.21
Co.li.1.177.

36.H.6.37. 33 In an Action of Maintenance the plaintife declared, That the defendant maintained one B. in the court of L. in an action of Couenant, which the plaintife brought againſt the ſaid B. in the ſame court. Whereunto the defendant pleaded, That he was retained to be the Atturney of the ſame B. in the ſaid ſuit which the plaintife did proſecute againſt him, by force wherof he came to a man learned in the law, by the commandement of the ſaid B. his client, and deſired him to be of counſell with the ſaid B. and gaue him his fee of the money of the ſaid B. the which is the ſame maintenance. And this was adiudged maintenance iuſtifiable: for when an expert and learned man is Atturney for another,

Maintenance by an Atturney.

another, he is to do all lawfull things which he can touching that ſuit, for the benefit of his client, with the priuitie or direction of his client, as in retaining of learned counſell, ſuing forth of originall or iudiciall proces, procuring a Jurie to be impanelled, and returned by the Shirife, by obtaining a Superſedeas for his client, when cauſe doth require it, and he may giue euidence to the Jury vpon the tryall of his clients cauſe: and alſo he may requeſt any of the Iurors impanelled for the triall of the ſaid cauſe, to appeare for the ſpeedy end of the ſaid ſuit. But neither the ſame Attourney who is retained for that only cauſe, nor a generall Attourney that is conſtituted by any perſon in al his cauſes, according to the ſtat. of Weſt. 2. may do any vnlawfull thing in his clients behalfe, as to giue or promiſe money, or other reward, of his owne or his clients, to a Juror, to giue his verdict for his client, or to threaten him if hee doe otherwiſe, or to defend or offer to defend his clients cauſe at his owne charges: or to procure the Shirife to returne a Jury at his denomination for the tryal of his clients cauſe: for in all theſe caſes laſt ſpecified, the maintenance is vnlawfull and puniſhable; for he cannot do them as an Attourney, but as a ſtraunger, a maintainor, and of his owne wrong. And if a man do maintaine a ſuit by an Attourney, an action of Maintenance doth lye againſt the Maſter. And if the Shirife of any Countie, his Vndercherife, or any Bailife, do any of the things aforeſaid, in any ſuit proſecuted betweene partie and partie, other than impanell a Jury, and ſummon them to appeare at a day & time prefixed by the kings writ, it is vnlawfull maintenance in him.

Kel. fol. 30.
13.H.4. 19.
34.H.6.26.
St. 13.Ed.1.cap.
11.H.6.10.
Maintenance in a Shirife or his bailifes
22.H.6.24.
13.H.4.19.

22.H.6.35.

Maintenance in reſpect of neighborhood.

34 In an action of Maintenance the defendant pleaded, That he whom it is ſuppoſed that he maintained, is his neighbour, and that hee came vnto him, and told him that the plaintife had procured a Capias to arreſt him, & therefore prayed the defendant to giue him counſell, what he were beſt to do, and he this defendant adviſed his ſaid neighbour to go to London, and to yeeld his body to the Juſtices, & to procure a Superſedeas, which is the ſame maintenance whereupon the action is brought. And this was adiudged no vnlawfulmaintenance, but a neighbourly and friendly counſell, which euery perſon may giue to another. For if a husbandman, or any other do come to his neighbour, & tell him that a ſtranger doth owe him money, or doth detaine his goods from him, and requeſt his counſel, that neighbour may aduiſe him to bring an action of Debt or Detinue againſt the ſame ſtranger: Or if one neighbour ſhall tell another, that he hath a cauſe to put in ſuite, and deſire that hee will inſtruct him what learned man in the law he doth know to whom he may repaire for counſel, his neighbour may informe him of ſuch one as hee taketh to bee learned, and alſo may goe with him to that learned man, and bee preſent when he doth retaine him of his counſell, and open his caſe vnto him, and alſo he being a meane man and of ſmall countenance or authoritie in the country, may goe to the bar and ſtand by him at the tryall of his cauſe in queſtion: but if that neighbour ſhall giue any money to the counſellor, to be retained with his neighbour, or ſhall giue any mony or other reward to the Shirife or Vnderſhirife, or to any Bayliſe, to arreſt the other party in his neighbours behalfe, or to anſwer his ſuite, then is it vnlawfull maintenance in him, and he is by action of Maintenance to be puniſhed therefore.

12.E.4.14.
19.Ed.4.3.

Where the maſter may maintaine his ſeruant.

35 In an action of Maintenance brought by A. againſt B. the plaintife declared, that where he brought another action before againſt C. the ſaid defendant did maintaine the ſame C. in the ſame firſt action: whereunto B. the

31.H.6.8.

defendant

defendant pleaded, That the ſame C. is his ſeruant, retained in his ſeruice for one whole yeare, and therefore he retained one P. an Apprentice of the law, to be of counſell with the ſaid C. his ſeruant, and paid the ſaid P. his fee, with part of the wages due to the ſayd C. which was the ſame maintenance: and this was adiudged a good plea in barre, and lawfull maintenance; for it is lawfull for the Maſter to requeſt a man that is learned in the law to be of counſell with his ſeruant in his ſuit, and to pay the ſame councello; his fee, with part of the wages of his ſaid ſeruant, and to goe with his ſeruant to the barre at the tryall of his cauſe in queſtion, which the law doth allow him to doe, in reſpect the ſoner to deliuer his ſeruant from ſuit and trouble, that hee may not loſe the benefit of his ſeruice, for the longer he doth lacke his mans ſeruice, the greater is the Maſters loſſe. And if the ſeruant be arreſted in any priuiledged place, the Maſter may maintaine him, and ſpend his owne money to deliuer him, in reſpect that otherwiſe he ſhould loſe his ſeruice: for by that meanes he doth maintaine him in his owne behalfe, and to auoid his owne hinderance. But if the ſeruant be impleaded in a reall action, wherein he may appeare, and anſwer by Attourney, and that his owne preſence is not requiſit, then the maſter may not maintaine him therein, for that the Maſter ſhall receiue no preiudice if the land in queſtion ſhall be recouered from his ſeruant. And in like ſort the ſeruant may maintaine the Maſter, in any ſuit commenced by or againſt his ſaid Maſter in all lawfull manner: As, hee may trauaile in furtherance of his Maſters ſuit, he may retaine his counſell with his Maſters money and ſhew his counſell, or the Jury, vpon the tryall of his Maſters cauſe in queſtion, his Maſters euidence: for he is bound to doe his Maſter his diligent ſeruice, and that which his Maſter commaundeth him to do touching his ſuit, is his Maſters ſeruice. But that ſeruant which may iuſtifie to maintaine his Maſter in ſuch ſort as is aforeſaid, muſt be a ſeruant who is retained with his Maſter for a yeare, or ſome long time, and to do al ſuch ſeruices as he ſhalbe imployed in by his ſaid Maſter: for if he be a ſeruãt only hired for a day, two, or three, or to ride but ſome one iourney, or to do but ſome one ſpeciall ſeruice, then if he do maintaine his Maſter, or his Maſter maintaine him in any ſort, as aforeſaid, it is vnlawful maintenance in him. But if in either of the caſes aforeſaid, the Maſter for his ſeruant, or the ſeruãt for his Maſter, ſhal giue or promiſe money, or other reward, to any of the Jury, to giue his verdit, or do threaten any of them to be killed, beaten, maimed, diſpoſſeſſed of their farmes, or do giue his owne money to the Shirife to arreſt the other party to that ſuit, then it is puniſhable by action of Maintenance, in him that ſhall ſo offend.

22.H.6.35.
9.H.6.64.
28.H.6.12.
19.Ed.4.3.
19.H.6.30.
21.H.7.40.
19.H.6.31.
19.Ed.4.3.
39.H.6.5.
19.E.4.14.
19.H.6.31.

How the ſeruant may maintaine his Maſter.

Deceit

Deceit, Couin, Collusion, Fraud.

The multitude and enormitie of Deceits and Frauds.

1 DEceit, Couin, Collusion, and Fraud, bée great offences to the Commonweale, and speciall impediments of the iustice and peace of the Realme, whereof there bée so many, and of so generall sorts and kinds, as there bée wicked deuises in the hearts of men, and lewde persons to put them in practise. And it were a worke almost as infinite, to diuulge the particulars, and to reduce into writing all the Deceits, Couins, Collusions, and Frauds, which in time haue béene inuented and effected, as it were to poise the weight of the sands of the sea, or to decipher the number of the starres of the element: for by how many meanes a man may trust, by so many and more hée may bée deceiued. And therefore I will vndertake to treat of no more than our common and statute lawes haue detected, and accused to bée deceits, frauds, &c. and amongst others, but of those which the makers, expositors, and Sages of our lawes haue noted to be chiefely offensiue, and most opposite to the due execution of iustice, vpon which this peace, whereof I doe write, doth chiefely depend. For the wisedome of this Realme, first in the making of our lawes, and after in expounding them, haue bent their chiefe care to crush and beate downe Deceit and Fraud, plainely seeing, that the greatest part of the crimes which bée commited in this kingdome, from the highest treason to the smallest trespasse, haue some intermixture with them: And that if they with their dependants could bée fully extirpat, both iustice and peace would more brightly flourish. And notwithstanding they doe not begin their quarrels with rapier and dagger, sword and buckler, as some other of the offences before mentioned do, yet is there grafted in the rot of them as much gawle and venim, and more durable and bitter extremities do spring from them, than doe ensue by the Canon shot, the light horsemans staffe, or the footemans bill: For though some part of euery Kings raigne hath had a calme & repose from warre and hostilitie, yet neuer any age or yeare was clearely freed of falshoods, corruptions, deceits, and frauds.

2 The wisedome of the Realme perceiuing how necessarie a thing iustice is, and how opposite and repugnant vnto it deceits and frauds bée, both there-

therefore ſpecially prouide to make choyſe of ſuch men of all ſorts, to execute the ſame iuſtice, as ſhe is perſwaded by their learning and experience can, and by their vertue and integritie will performe to euery perſon his due, and tread and beate downe fraud, whoſe paines ſhe doth requite with reuerend reſpect, liberall rewards, titles of credit, and large priuiledges. But if ſhe do find any of the ſayd officers whom ſhe putteth in truſt, to deceiue her expectation, and to practiſe falſhood or guile, then ſhe doth as sharply punish them, as ſhe did before munificently wage them: As appeareth by the ſtatute of Ann 8. R. 2. whereby it was ordained, That if any Iudge or Clerke doe make any falſe entring of a plea, raſe any roll, or change any verdict, whereby any perſon receiueth diſheritance, and he be thereof conuict before the King and his Counſell, he ſhall bee punished by fine and ranſome at the Kings pleaſure, and ſatisfie the partie: And for the recouerie of the inheritance, the party ſhall ſue by writ according to the law. And for the auoyding of corruption which may happen in officers in thoſe courts and places, wherein there is requiſit to bee had the true adminiſtration of iuſtice; and to the intent that worthy perſons ſhould bee preferred to the places of iuſtice, and none other ſhould attaine the ſame for fee or reward, by a Stat. made Ann 5. & 6. E. 6. it was enacted, That if any perſon bargaine or ſell any office, or deputation of office, or take any money, fee, reward, or other profit, directly or indirectly, or take any promiſe, agreement, couenant, bond, or aſſurance, to receiue or haue any money, reward, &c. for any office, or the deputation of any office, or any part of any of them, or to the intent that any perſon ſhould enioy any office, or the deputation of any of them, or any part or parcell of any of them, which office, or any part of it doth concerne the adminiſtration or execution of iuſtice, or which ſhall concerne any clerkeſhip, to bee occupied in any court of record, wherein iuſtice is to be miniſtred: then he ſo offending, ſhal not loſe onely all his right and eſtate, which hee ſhall then haue of, in, or to the ſayd office, or deputation, but alſo he that ſhal giue or promiſe any money, fee, or reward, for any ſuch office, or deputation, ſhal immediatly vpon the ſayd gift, or promiſe, be adiudged a diſabled perſon in the law to all intents, to haue or enioy the ſaide office or deputation. And euery ſuch bargaine, ſale, bond, couenant, promiſe, and aſſurance, ſhall be void, to and againſt him by whom the ſame is made. But this Act ſhall not bee preiudiciall to the chiefe Iuſtice of the Kings Bench and Common pleas, or to the Iuſt. of Aſſiſe, but they may doe in euery behalfe concerning any office to bee granted by any of them, as they might haue done before the making of the ſame Act. And becauſe the prouidence of the realm did conceiue ſome iealouſie and ſuſpition in thoſe learned men in the lawes of this realm, who by their owne meanes and induſtrie, and for their own commoditie and eaſe, obtained to bee Iuſt. of Aſſiſe in the counties where they were borne, or did dwell, and did feare that affection and fauor towards their kinſmen, allies, neighbors, and friends, might ſometime allure them to decline from the beaten path of iuſtice, therefore by one Statute made Anno 8. R. 2. and another An 33. H. 8. it was enacted, That no Iuſtice, nor other man learned in the lawes of this realme, ſhall exercis the office of Iuſt. of Aſſiſe within the countie where he was borne or doth inhabit, vpon paine to forfeit for euery offence done contrary to this act C. l. to the King and him that will ſue by B. P. I. or action of debt, wherein no Wi. C. P. But this Statute doth not extend to any Clerke of Aſſiſe, aſſociat to any Iuſt. of Aſſiſe: nor to the Iuſtices, Iuſtices Clerks, or Clerke of Aſſiſe within the Duchie, & County Palantine of Lancaſter: nor to the Iuſt. of the one Bench or the other, for

The reward for paines and punishments for deceit of officers towards the law.

3 Iudge. 3 Clerke.

St. 8. R. 2. 3, 4.

No office of iuſtice ſhalbe ſold or bought

St. 5. R. 2. c. 8. E. 6. 16.

St. 33. H. 8. 24

No man ſhall be iuſtice of Aſſiſe in his owne countie.

for taking, hearing, and determining of Assises in the said courts: nor to any Iust. that shall take any Assise vpon adiournment, for difficultie of the same: nor to any Maiors, Sheriffes, Recorders, Stewards, Bailifs, Sutors, or other officers in any cities, borough, or towne, but they may be Iust. of Assise, of Freth force, and of other Assises, in the same towne &c. where he or they do dwell, or were borne, as they might haue bene before. And in like sort by the Statute of Westm. 1. it was established, That if any Sergeant, Pleader, or other, do any Deceit in the Kings court, or do consent thereunto, to beguile the court, or the partie, and is thereof attainted, he shalbe imprisoned a yeare and a day, and being a councellor, he shall not any more be received to pleade in the Kings court for any man, and if he be any other then a pleader, he shalbe imprisoned as aforesaide. And if the trespas require a greater punishment, it shalbe at the Kings pleasure. And by the Statute of Anno 10. H. 6. & Anno 18. H. 6. it was enacted, That if any Philozer, Erigenter, or any other officer of the Kings Bench, or Common pleas, do make any entry in any suite, that the plaintife in the same suit hath offered himselfe in his owne proper person, except the plaintife in the same suite (before such entrie be made) do appeare in his owne proper person before some of the Iustices of the place where the plea is depending, and there be sworne vpon a booke, that he is the same person in whose name the sayde suit is pursued, or that some credible person of the Kings counsel will take such othe for him, the sayd Philozer, Erigenter, &c. shall forfeit 11.s. to the King euery time that he shall be attainted by the examination of any of the Iustices of the same place where any such entry or record is.

A Serieant. A Pleader. St. 3. Ed. 1, 2.

A Philozer. An Erigēter. St. 10. H. 6. 4. 18. H. 6. 9.

3 And because Atturneies be also necessary mēbers in the common weale, and speciall meanes to solicit and further the execution of iustice, therefore the law hath had a carefull regard they should be men of integrity, vertuous, and of good name; and hath prouided seuerall Statutes to punish such of them as shall commit any notorious falshood, guile, fraud, slacknes, ignorance, omission, or contempt of dutie: As by the Stat. of Anno 4. H. 4. it was ordained, That al Atturneies shalbe examined by the Iustices, and by their discretions their names shalbe put in the roll, and they that be good, vertuous, learned, and of good name, shalbe receiued and sworne well and truly to serue in their offices, and specially, that they make no suite in a forrein county. And if any such Attourney be notoriously found in any default of record, or otherwise, he shall forsweare the court, and neuer after be received to make any suite in the Kings courts. And this ordinance shalbe performed in the Exchequer after the discretion of the treasurer and the barons there. And accordingly by one other Statute made Añ 3. Iacob. it was enacted, That none shall from hence forth be admitted Atturneies in any of the Kings courts of record at West. but such as haue bene brought vp in the same courts, or otherwise wel practised in soliciting of causes, and haue bin found by their dealing to be skilful, & of honest disposition: and none to be suffered to solicit any cause or causes in any of the courts aforesayd, but only such as are known to be men of honest disposition. And no Attourney shall admit any other to follow any suite in his name, vpon paine that both the Attourney and he that followeth the suit in his name, shall each of them forfeite for such offence xx. l. to the King and the party grieued, to be recouered in any of the said courts of record, by A. B. P. I. wherein no W. E. P. &c. And the Atturney in such case shalbe excluded from being an Attorney for euer hereafter. By the Stat. of Añ 18. H. 6. it was

St. 4. H. 4. 18.

St. 3. Iac. 7.

Who shalbe Atturneyes.

Soliciters.

Following a suit in anothers name.

St. 18. H. 6. 9.

was enacted, That in all caſes wherein proceſſe of Capias and Exigent lyeth, if the Atturney haue not his warrant of Record, the ſame terme that the Exigent is awarded, hee ſhall loſe forty ſhillings to the King, if hee be attainted thereof by examination of the Juſtice. And by the Statute made Anno 32. H. 8. and Anno 18. Eliz. it was eſtabliſhed, That euery ſuch perſon which ſhall be Atturney for any other perſon or perſons, being demandant or plaintife, tenant or defendant, in any action or ſuit commenced in any of the kings Courts of Record at Weſtminſter, and pleade to an iſſue in the ſame, ſhall deliuer or cauſe to be deliuered, his lawfull warrant of Atturney, to be entred of Record for euery of the ſaid actions or ſuits wherein he is named an Atturney, to the officer or his deputy ordained for the receit or entring thereof, in the ſame terme when the iſſue is entred of Record in the ſaid Court, or before, vpon paine of forfeiture of tenne pounds for euery default, for not deliuery of the ſaid warrant: the one moitie to the King his heires and ſucceſſors, the other to ſuch officer, to whom, or in whoſe office the ſame warrant ſhould be deliuered, entred, or filed, to be recouered by action of debt B. P. or J. wherein no W. E. P. &c. and alſo he ſhall ſuffer ſuch impriſonment as by the diſcretion of the J. of the Court (where any ſuch default ſhall be made) ſhall be thought good. If a man make an Atturney in a reall action brought againſt him, and after by couin agreed vpon betweene the demandant and the ſaid Atturney, the ſame Atturney maketh default, whereby the tenant doth loſe his land: then the ſame tenant who loſt his land, may haue a writ of Deceit againſt the Atturney. And ſo it is, if a man bring an action of Treſpaſſe againſt two others, and the plaintife and an Atturney by couin agreed vpon betweene them, do cauſe two ſtrangers, not parties to the writ, to come into the court, and to ſay, that they be the ſame two defendants named in the writ, and that they do conſtitute the ſame man to be their Atturney in that ſuit: whereupon the ſame Atturney, as Atturney to the defendants named in the Writ, doe pleade to an iſſue, and after ſuffer the enqueſt to paſſe by his default, by which means the plaintife doth recouer againſt the defendant: in this caſe they who be indeede defendants, and againſt whom the ſame action of Treſpaſſe was brought, may haue a Writ of Deceit againſt the ſame Atturney, that appeared as Atturney for them, and ſhall recouer their dammages. If an Atturney doe be informed by his Client, to pleade a falſe plea, which he can not in conſcience pleade, he may procure this Entrie to be made, Quod non fuit veraciter informatus, ideo nihil &c. to defend him in a writ of Deceit brought againſt him by his ſaid Client. If an Atturney doe ſue forth a Capias, where there was no originall writ before, he ſhall be committed to priſon, and thruſt out of his place in that and all other Courts.

St. 32. H. 8. 30
St. 18. El. 13.

Fitz. N. B. 96.

Deceit by an Atturney.

Regiſt. fo. 113
Fitz. N. B. 96.

10. Ed 4. 9.
20. Elizab.
Dyer 367.

20. H. 6. 39

4 As the Law doth puniſh her Officers who do practiſe or commit any deceit or fraud, in ſtead of truth, in place of iuſtice, ſo doth ſhe renounce and condemne all acts of greateſt importance, if they be intermixt with guile and falſhood: For though Judiciall acts, as Fines, Recoueries, Warranties, Deeds inrolled, &c. being of their owne natures iuſt and lawfull, and meanes to ſettle titles, to appeaſe controuerſies, and to yeeld each perſon his due, be therefore greatly reſpected and fauoured in her ſight; yet if any of them be deuiſed, or executed by couin, or to deceiue, then ſhe doth vtterly retect them, and adiudge them void. As a man was Lord of the Manor of D. wherein there was a tenant which had ſome parcells of freehold land in fee ſimple: the Lord demiſed certaine lands, parcell of the demeſnes of his ſaid Manor to the ſaid

The law retecteth fraudulent acts.

Co lib. 3. 77

freholder, for xxj. yeares, reſeruing certaine rent, and demiſed ſome other lands, parcell of the ſaid demeſnes, to the ſame freholder at will, reſeruing an other rent, and graunted by copie of Court roll certaine other lands, parcell of the ſame Manor, to the ſaid freholder, for the terme of life, according to the cuſtome of the ſaid Manor, reſeruing a third rent: And after the ſame freholder demiſed all the ſaid lands, which hee held by leaſe, for yeares, at will, and by copie in D. to a ſtranger for the terme of life: and then the ſame freholder leuied a fine with proclamations, of ſo many meſſuages, ſo many acres of land, medow, paſture, &c. as he had by leaſe for yeares, at will, by copie of Court roll, and of his owne inheritance in D. by couin and fraud, to barre the Lord of his inheritaunce. All the proclamations were made, and the fiue yeares were paſt, the ſame freholder continued in poſſeſſion of the land which was graunted to him by leaſe for yeares, at will, and by copie, and paid to the Lord yerely his ſeuerall rents for the ſame. And after the ſtranger to whom the freholder made the leaſe for life, died, and the leaſe which the Lord made to the freholder for xxj. yeares expired. And then the ſame freholder claimed the inheritance of all the land which the Lord demiſed vnto him for yeers, at will, and by copie, intending to barre the Lord thereof, by force of the fine with proclamations, and the fiue yeares paſt. But this fine was adiudged void againſt the Lord, and that it did not barre him to claime and enter vpon his land, for that it was leuied by him, who had but eſtate in thoſe lands for yeares, at will, or by copy of court Roll, and that neither had nor could pretend any title to the inheritance of the land, but only by fraud practiſed the diſheritance of the leaſor. And whereas the meaning of the makers of the Statute of Anno 4. H. 7. 5 in 4. H. 7. 24
was (as it may appeare by the preamble of the ſame) that fines ought to be of the greateſt ſtrength to auoid ſtrifes and debates, when the leſſee for yeares, at will, or copyholder ſhall make an aſſurance by fraud and couin, to the intent a fine may be leuied, to diſherit the right owner of his land, this is not a means to auoid or appeaſe ſtrife, but to begin it, where none was before: and therefore the ſame ſtatute did not intend to ratifie ſuch an eſtate begunne by deceit.

A fine leuied of land to defraud the right owner thereof.

And further, the meaning of the makers of the ſaid ſtatute was not, That hee who could not leuie a fine of this land, in reſpect of the debilitie of his eſtate therein, ſhould be enabled by his owne practiſe and deceit to leuy a fine thereof, to barre him who had a lawfull title therein, and a right to leuie a fine thereof. And the ſame leſſee for yeares, tenant at will, and copieholder continued his fraud in ſo ſecret manner, that by his couert practiſe he depriued his leſſor of the remedy which the ſaid ſtatute of Anno 4. H. 7. did giue him, viz. to make his entry, or to purſue his action within fiue yeares, which he could not do, being ignorant of the leaſe for life which his tenant had made of this land to a ſtranger: and alſo conceiuing that the leſſee hauing land of his owne fee ſimple in the ſame towne, he leuied a fine of that land, which he might lawfully do. And the deceit and fraud in this caſe is the more odious, becauſe it was practiſed by the leſſee againſt his leſſor, and by the copyholder againſt his Lord, who is by the law bound to do fealty to the leſſor and Lord, which is a bond of confidence, and a lincke of truſt. And if a man ſeiſed of land in fee, do make a leaſe Fit. Fine. 120
to another thereof for terme of life, and the leſſee for life doth leuie a fine thereof to a ſtranger, he in the reuerſion may enter into the ſame land for a forfeiture, and put forth the conuſee in the fine, and auoid the fine, for it was leuied by deceit, to defraud him of his reuerſion. If a fine be leuied of lands to ſecret vſes to deceiue the purchaſor of the ſame land, it may be auerred to be leuied by fraud, & ſo by the ſtatute of 27. El. 4. auoided. And ſo if a fine be leuied vpon Stat. 27. El. 4.

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an vſurious contract, and that be auerred, the ſame fine ſhal be void by the ſta-
Sta. 13, El. 8. tute of 13. Eliz. 8.

A fine lenied of ancient demeſne lands to defraud the Lord.

5 The Law is as prouident to protect mens ſeigniories, rents, and ſeruices from euiction by deceit, as ſhe is their lands and tenements: and knowing that a fine in ſome caſes lenied by couin of the one, may be as preiudiciall to his inheritance, as of the other, hath therefore ordained ſeuerall remedies to redreſſe ſeuerall wrongs: as if a man ſeiſed of lands in ancient demeſne, do leuy a fine thereof at the common law to another, this is a deceit to the lord of that
21. Ed 3. 20. Fitz. N. B. 98. manno^r of whom the ſaid lands be holden, and therefore he may haue a writ of Deceit againſt the conniſo^r and the tenant of the Lord, and thereby auoid the ſaid fine, and then he that lenied the ſaid fine ſhall be reſtored to the poſſeſſion, and the title which he had before in the ſame land, and alſo the ſame land ſhall returne and become auncient demeſne as it was before, for that the ſaid
21. Ed. 3 56. fine ſhalbe vtterly void. And he that is Lord of a manor of auncient demeſne but for the terme of his life only, may maintaine this writ of Deceit. And ſo may he in reuerſion, if tenant for the terme of life doe not bring it during his life, and either of them by his ſaid writ may auoid the ſame fine: for by the le-
8. Ed. 4. 6. uying of a fine at the common law of lands in ancient demeſne, or by recouerie of them at the common Lawe, the ſame lands doe become Franke fée, and pleadable at the common law, and ſo the Lord ſhould be deceiued of his right, and loſe his ſeignioric in them. And the writ of Deceit wil auoid the ſaid fine or recouerie, becauſe the fine was lenied, and the recouerie was ſuffered coram non iudice, in deceit of the Lord, viz. not before that Judge, nor in that court,
17 Ed. 3. 31 7. H. 4. 44 8. H 4. 23 Fitz. N. B. 98 where they ought to haue beene. But if a man ſeiſed of lands, whereof parcell be ancient demeſne, and parcell Franke fée, doe leuy a fine at the common law of both parcells: in this caſe though the Lord of the auncient demeſne doe by his writ of Deceit auoid the fine for ſo much as is ancient demeſne, yet the reſidue of thoſe lands which be Franke fée, ſhall continue in force: for a fine lenied of them was no wrong or deceit to any.

A writ of Deceit to auoid a recouery.

6 And the ſame law is where land is recouered by deceit: as if one man do bring a Præcipe quod reddat againſt another, and demaund certaine land, by force whereof the tenant ought to be ſommoned to be before the Juſtices at a certaine day, and the ſhirife doth returne the tenant of the land, againſt
Fitz. N. B. 97 whom the ſaid Præcipe is brought, ſommoned, whereas in truth hée was not ſommoned: by which falſe returne and deceit of the ſhirife, the demaundant doth vpon the Grand Cape recouer ſeiſin of the land by default of the tenant:
3. Ed. 3 28. Fit. Deceit 49 in this caſe the tenant to whom this deceit is done, may after iudgement giuen for the demaundant, haue a writ of Deceit againſt him that did recouer, and againſt the ſhirife for his falſe returne. And by this writ of Deceit the tenant ſhalbe reſtored to his land againe, ſo that it be brought during the life of
18. Ed. 4. 11 the ſommoners, viewers, and pernors, or any of them: for if it be not brought vntill all the ſommoners, viewers, and pernors be dead, it will not lie, for after the death of them the tenant ſhal not haue a writ of Deceit; for proces ſhal be awarded againſt the ſommoners, viewers, & pernors to appeare in court, and by the examination of them it is to be tried whether the tenant was ſommoned, or not: for the ſommons muſt be made by two ſommoners at the leaſt,
50. Ed. 3. 16 8 H. 6. 1. Fit. Deceit 48 and vj. viewers. And if any of them did not their duty, then the writ was not executed as it ought to haue bin, and therefore the plaintife in the writ of Deceit ought to be reſtored. But the King ſhall haue the iſſues of the land in the

meane time. And if the demaundant, who did recouer by the ſhirifes falſe re- turne, do make a feoffment of the land, then the writ of deceit muſt be brought againſt the demaundant, the feoffee, and the ſhirife: and if the demandant that doth recouer, and the ſhirife alſo, be both dead, yet the writ of Deceit may bee brought againſt the heire of the demaundant, and the tenant of the land, if the ſommoners, viewers, and pernors be liuing. And if a man do loſe his land by default in a Præcipe quod reddat, whereby he was not ſommoned, and then dieth, his heire may haue a writ of Deceit as well as his auncestor, and ſhall haue reſtitution: and the vouchée may haue a writ of Deceit, where hée doth loſe by default, if he were not ſommoned.

Fitz. Deceit 32.33.34.46. 8.Ed.3.6. 10.Ed.3.43. Fitz.N.B.98. Fitz. Deceit 38. The vouchée.

Deceit to auoid a recouerie vpon a Scire facias.

7 And ſo it is, if a man ſue a Scire facias againſt another, to haue execution of a fine, if a ſhirife returne the tenant of the land ſommoned by two ſommoners, whereas he was not ſommoned, by which returne the demaundant ſhall recouer, and haue execution of the land, if the tenant do not appeare, and the tenant ſhall loſe the land: in this caſe the tenant may haue a writ of Deceit againſt the ſhirife, and the demaundant that did recouer, and him that is then tenant of the land, and ſhall be reſtored to his former poſſeſſion. And the like Law is, if a man ſue a Scire facias vpon a Recognizance againſt another for a debt before recouered, if the Shirife returne the defendant ſommoned, whereas he was not ſommoned, by reaſon whereof the defendant hath execution awarded againſt him of the debt, then the defendant may haue a writ of Deceit againſt him that had the execution, and the ſhirife, and the ſhirife ſhall be puniſhed for his falſe returne, and the party who did recouer, ſhall make reſtitution of that which he recouered: and if the defendant die, his executors may haue a writ of Deceit, and be reſtored, if the deceit be proued, and that the Teſtator was not garniſhed, whereupon the garniſhers ſhalbe examined. And ſo it is, if a man recouer in a writ of Annuity, and after doth ſue a Scire facias, and recouereth by default of garniſhment, the defendant may haue a writ of Deceit: For by the ſtatute of Anno 2. Ed. 3. a writ of Deceit holdeth place, and is maintenable as well in place of garniſhment, which toucheth plea of land where ſuch garniſhment is giuen, as in caſe of ſommons in a plea of land: for in all the caſes aforeſaid a deceit was wrought by the Sherife to the Court and the party greeued by his falſe returne: and the Law hath ordained, That euery of thoſe deceits ſhal be reformed by the writ of Deceit. And a recouerie and iudgement had, made, and giuen, to the intent to defraud and fruſtrate the true meaning of a ſtatute, ſhal be void, as amongſt others it appeareth by the ſtatute of Anno 43. Eliz. whereby it was ordained, That all iudgements which ſhall be had, for the intent to haue and enioy any leaſe of a benefice with cure, or any bonds, contracts, promiſes, and couenants made for any perſon to enioy the ſame, contrary to the ſtatute of Anno 13. Eliz. 20. and Anno 14. Eliz. 11. or any of them, ſhall be void, in ſuch ſort as bonds and couenants are appointed to be void, which are made void for that purpoſe; for that the ſuits whereupon the ſame iudgements be giuen, were commenced and proſecuted vpon colluſion and fraud, to defeat and make fruſtrate the true intent and meaning of the ſaid Statutes, or of one of them.

Deceit to auoid a recouerie of debt. 17.Ed.3.12. Where executors ſhall haue a writ of Deceit. Annuitie. Fitz. Deceit 42. Sta. 2.E.3.17 A iudgement to defraud the meaning of a ſtatute. Sta. 43. Eliz. 9

Deceit vpon recouerie in a Quare impedit

8 If any perſon do recouer againſt another in a Quare impedit by default of the defendant, whereas he was not ſommoned, then the ſame defendant may haue a writ of Deceit, and the Sommoners, and the pledges vpon the attachment, and the mainpernors vpon the diſtreſſe ſhall be examined: and if the

27.H.6.5. Fitz. Deceit 57. 19. Eliz. Dyer 353.

the deceit be found, the firſt iudgement ſhall be reuerſed, and there ſhall be a writ awarded to the Biſhop, to remoue the Clerke that was in the Church.

39.Ed.3.42 48.Ed.3.20 Fit. Deceit 30

Deceit vpon a recouery in waſte.

And ſo it is, if any perſon doe bring an action of Waſte againſt an other, and the plaintife doe recouer againſt the defendant by default, whereupon a writ is awarded to the ſhirife to inquire of the waſte, whereas the defendant was not ſommoned, the defendant may haue a writ of Deceit againſt him that recouered in the ſame action of Waſte, and he ſhal ſuppoſe that he was not ſommoned, attached, nor diſtrained: and proceſſe ſhalbe awarded againſt the ſommoners, the pledges, and the mainpernors, who ſhall be ſeuerally examined, and if they al did not their duty according to the Law, the plaintife in the writ of Deceit ſhall recouer, and be reſtored to that which before he loſt in the action of Waſt.

17.E.3.3 I.36

Deceit vpon a recouery by a Præcipe in capite.

9 And the like law is, if any perſon doe recouer land againſt another by a Præcipe in capite, where the ſame land is not holden of the King in chiefe, but of a meane lord by other ſeruices, and where the demaundant had no licence of the chiefe Lord to ſue at the common place: then the chiefe Lord may haue a writ of Deceit againſt him that recouered the ſame land, wherein he ſhall recouer his dammages, and the demaundant ſhall be impriſoned for the deceit, and alſo the Lord ſhall retaine his ſeigniory in the ſame land: But the recouerie ſhall remaine in force, and he that did recouer, ſhall alſo hold of the King in chiefe, by the way of eſtoppell. And this writ of Deceit is maintenable in

9.H.3.24

this caſe, by force of the ſtatute of Magna Charta, whereby it is ordained, That the writ which is called Præcipe in capite ſhall be granted to no man, whereby any freeman may loſe his Court.

Where a good title ſhalbe impaired by a couenous recouerie.

10 Couin is accounted ſo profeſſed an enemy to iuſtice, and therefore is ſo hated by the law, that ſhee adiudgeth that bad and vnlawfull which is mixed with couin, though before of it ſelfe it were good and lawfull: as if the iſſue in

44.Aſſ p.28 41.Aſſ p.28.

taile, who hath good cauſe to bring a Formedon in diſcender vpon a diſcontinuance made of certain lands by one of his anceſtors, be of couin, that a ſtranger ſhall diſſeiſe the tenant of the land, againſt which ſtranger he doth bring his action, and doth recouer this land, and hath execution: in this caſe he ſhall not be remitted to his former eſtate, though his title be good, but ſhall be adiudged in poſſeſſion by diſſeiſin, in reſpect of the couin. And ſo it is, if a woman that hath good cauſe to be indowed of her late husbands lands, will be of couin that a ſtranger ſhal diſſeiſe the tenant of the land whereof ſhe is indowable, againſt which ſtranger ſhe will bring a writ of Dower, and recouer, and hath execution, ſhe ſhall be adiudged in poſſeſſion againſt the diſſeiſee but as a diſſeiſor, in reſpect of her couin, though ſhe had good title to be indowed. And ſo couin mingling together vertue and vice, perſwadeth the law to reiect and condemne a lawfull title, which is vnlawfully atchieued.

44.Ed.3.46. 15.Ed.4.4 7.H.7.11 Co.lib.3.31

Warranties deuiſed by fraud.

11 As the Law doth both condemne and reiect fines and recoueries, which be practiſed or put in execution by fraud or deceit, ſo doth ſhee renounce and make fruſtrate all ſorts of warranties that be deuiſed or contriued vpon colluſion or couin to defeate or defraud others of their iuſt and lawfull titles: for though warranties be much fauoured in the Law, for that they be meanes to eſtabliſh the title of thoſe who be tenants of land in poſſeſſion, but yet if anie of them be vndertaken, performed, or mixed with fraud, then it doth not onely loſe his fauour, but alſo his force in law. As if land be giuen to the father

for the terme of his life, the remainder to his ſon and heire apparant in taile, and the father by couin and agreement betweene him and an other (to bar his ſonne by a collaterall warranty of his remainder) wil make a leaſe of the ſame land to that other perſon, who will make a feoffement in fee to a third perſon of the ſame land, to whom the father wil releaſe with warranty: and then the father dieth, and the warranty doth diſcend vpon his ſonne being of full age: yet this warranie will not barre the ſonne of this land: for the feoffement of the leſſee for yeares was a diſſeiſin, and the father was partaker of the offence, an actor, and agreeing thereunto: and though the releaſe with warrantie was made after the diſſeiſin, yet ſeeing the diſſeiſin was made to that end, the Law doth adiudge the whole fact from the beginning to be fraudulent, the warranty to begin by diſſeiſin, and ſo all that aſſurance to be voide againſt the heire in taile. And in like ſort, other warranties that do commence by diſſeiſin, be continued to deceiue and defeat the right heires of their iuſt and lawfull titles. Co. lib 5. 75. 30. Ed. 3. 12. 43. Ed. 3. 27

Deceit by getting of a protection.

12 If one do bring a Præcipe quod reddat againſt ij. other men, and they doe purchaſe a protection for one of them, ſuggeſting that he is to goe beyond the ſea in the kings ſeruice, whereas he doth not ſo, but remaineth ſtil in England, and ſo hath done euer ſithence his protection purchaſed, by which means the demandant is delayed of his ſuit: in this caſe the ſame demaundant may haue a writ of Deceit againſt the ſaid tenants for this deceit and delay, and ſhall recouer his damnages. 30. H. 6. 10. Regiſt. f. 113. 43. Ed. 3. 4

Deceit by purchaſing a writ to charge another.

13 Whereas according to the courſe of the Chauncery, the king is to haue of euerie perſon, who doth bring againſt an other an action of Debt of the ſumme of fortie pounds, or more, fiue ſhillings eight pence for a fine, and for an hundred markes, ſix ſhillings eight pence, and ſo for euery hundred marks ſix ſhillings eight pence, and for euery Præcipe quod reddat brought of land, to the yeerely value of fiue marks, ſix ſhillings eight pence, and ſo according to to that rate (vnleſſe it be a writ of right patent.) If any other perſon doe purchaſe a writ in the Chauncerie in my name, without my priuitie, whereby I ſhalbe charged to pay to the King for a fine any of the ſums aforeſaid, I may haue an action of Deceit againſt him, and recouer my damages, for this writ was obtained to put me to charges, and thereby to deceiue me of ſo much. Fitz. N. Br. 96

Deceit for purchaſing a writ in another's name.

14 If A. being patron of a Benefice, when the Church is voide doe preſent his Clerke to the Ordinary, and B. doth diſturbe him, whereupon C. doth purchaſe a Quare impedit againſt B. in the name of A. returnable in the common pleas, A. not knowing thereof, and after doth cauſe the writ to be abated, or A. to be nonſuit in that writ: in this caſe A. may haue a writ of Deceit againſt the ſame C. and recouer his damnages. Fitz. N. B. 96. Regiſt. f. 112. 7. H. 6. 45

Deceit for procuring of a ſuit.

And if B. do procure C. to ſue an action againſt A. whereby A. is vexed, A. may haue a writ of Deceit againſt B. Fitz. N. Br. 98

Deceit by acknowledging of a ſtatute.

15 If A. and B. do come before the Maior of the Staple, or before anie other Maior of anie Citie, Borough, or Towne, hauing authoritie to take acknowledgement of debts, and there A. doth acknowledge a ſtatute to B. of an hundred pounds, or &c. in the name of C, & doth report himſelfe to be C. where he is not ſo, whereupon C. is troubled, and this ſtatute extended againſt him, then the ſame C. may haue a writ of Deceit againſt the ſaid A. and B. and ſhal recouer Fitz. Nat. Br. 100. & 105. Regiſt. fo. 115.

recouer his dammages. And ſo it is, if another man will leuie a fine of my land in my name, or conſeſſe an action brought againſt mée in my name, or will enter into a voucher in my name, and confeſſe the demaundants action, or will acknowledge a Recognizance, or ſtatute Marchant, or other matter of Record in my name, I haue no other remedie but by an action of Deceit. But it is otherwiſe, if he ſeale and deliuer an Obligation in my name: for I may plead that it is not my déed, which I cannot doe againſt a Record.

19.H.6.44. Regiſt.fo.113. Deceit by doing of a iudiciall act in anothers name.

Fitz.Nat.Bre. 99. Regiſt.fo.114. 16 If a Notarie, and other perſons doe by agrément counterfeit the ſeale of any Parſon, or Vicar, and forge letters of reſignation of his Parſonage or Vicarage, in the name of the ſame Parſon or Vicar, by which meanes he is remoued from the poſſeſſion of the ſame Parſonage or Vicarage, he may haue a writ of Deceit againſt the ſame Forgers. Deceit by forging of a reſignation.

20.H.6.36. 21.H.7.41. 16.Ed.4.9. 17 If a man doe bargaine with another to enfeoffe him of certaine lands within twenty dayes, or &c. and after he doth infeoffe a ſtranger of the ſame land, then he with whom the bargain was made, & was deceiued therein, may haue a writ of Deceit againſt him that ſo bargained and defeated him thereof. And ſo it is, if a man doe compound with another to purchaſe a manor, or certaine land for him, and he doth buy it for himſelfe, the partie may haue an action of Deceit againſt the ſame purchaſor. And in all caſes, where a man doth promiſe to doe a thing, and he doth it falſely, a writ of Deceit is maintainable againſt him: as if a man doe promiſe to aſſure land to another, and after he doth graunt a Rent charge, or a common out of it, or doth make a Leaſe for life or yeares of it, and then doth aſſure it to the bargainée, this is deceit, and a writ of Deceit is maintainable againſt him for it, for though he hath aſſured the land, he hath not aſſured it cléere and diſcharged, according to his bargain, but hath deceiued the purchaſor therein. Deceit by aſſuring of land to one man, which was bargained to another. Deceit by charging of land after ſale.

11.Ed.4.6. 6.Ed.6. Dyer 76. 18 If a man do ſell a piece of cloth to an other, and warrant it to be fortie elles long, and it is not ſo long, the buyer may haue a writ of Deceit againſt the ſeller of the ſame cloth, by force of his warranty, although the warranty be by word onely, without writing, ſo that it be at the time of the bargaine made. But if the warranty be at an other time after the bargaine made, then the buyer muſt haue ſome writing to teſtifie this warranty, or otherwiſe hée ſhall not haue a writ of Deceit againſt the ſeller. Deceit vpon a warranty.

9.Ed.4.13. Fitz.Nat.Br. 98. 19 If an Action of Debt bée brought againſt two as Executors, whereas one of them was neuer executor nor adminiſtrator, and if he which is executor do make default, and he who was not executor doe appeare, & confeſſe the action, he that was named executor may haue againſt the other an action of Deceit: for he hath vndertaken to plead a plea to the action of debt, which he could not doe, and that alſo to the deceit and hurt of another. Deceit by confeſſion of an action brought againſt executors.

26.H.8.7. 20 If a man doe marry a wife poſſeſſed of goods, thoſe goods bée the huſbands, to giue and diſpoſe at his pleaſure during the marriage betweene them. But, if after they be diuorced, the wife ſhall haue her goods againe, vnleſſe the huſband hath giuen or ſold them before the Diuorce, for in that caſe the wife is without remedy. And yet if the huſband do alien thoſe goods by couin, to the intent to defraud and defeat his wife of them, and after they bée diuorced, then ſhée may auerre the couin, and recouer the goods from the alienée. Couin by aliening of his wiues goods.

21 Though

Sale of goods in open market by couin.

21 Though buying of goods in an open market doth worke an alteration of the property of the ſame goods, and doth bind the Title as well of all ſtrangers as of the owner (if the goods be ſold in ſuch a ſhop or place as is commonly vſed for the ſelling of goods of the ſame kind or nature) yet if one man do ſteale, purloine, or iniuriouſly take away another mans goods, and then by couin betweene him and a third perſon doth ſell the ſame goods in an open & vſual place of ſale, in an open market or faire, to that third perſon, who at the time of buying of the ſame goods, did know that the ſeller came not lawfully by them, or that they were not his goods, this is a void ſale. And in reſpect of this Couin, the firſt and right owner of theſe goods may lawfully take and carrie them away, notwithſtanding the ſaid ſale in open market. 35.H.6.5. Co.lib.3.78. 83.b.5.83. 2.H.7.12.

Fraudulent conueyance to defeat a Lord of his wardſhip.

22 If the father being tenant in tayle of certaine lands, will make a feoffement thereof to another with warrantie, and ſo diſcontinue the eſtate taile, hauing aſſets of other lands in fee ſimple, to leane to diſcend to his ſon and heire, and then within few dayes before his death will alien the ſame fee ſimple land to his ſonne and heire, and to his heires, vpon couin, and to the intent that the ſame fee ſimple land ſhould not be pleaded to come by diſcent from the ſayd father to his ſonne, nor adiudged as Aſſets by diſcent in his hands: yet this couin being found by verdict in a writ of Formedon brought againſt him by the heire of the land entailed, ſhall giue the diſcontinuee aduantage to plead, that the ſame heire had aſſets by diſcent in fee ſimple left him by his ſaid father: for that the law doth adiudge this alienation made by the father to the ſon a little before his death, by couin to fraud the diſcontinuee of his lawfull plea, to be as no alienation, but that the father dyed ſeiſed of the ſame fee ſimple land, and that it came to his ſonne and heire by diſcent. M.34.E.1. Fitz. Garrantie 88.

Fraudulent aſſurances to defeat the diſcontinuee in tayle.

23 Becauſe Lords of Mannors, lands and tenements, haue as great right to enioy the wardſhip of the bodies and lands of their wards, as they haue to their other inheritances, lands, and goods, and it is as great an iniury to deceiue them thereof by couin and colluſion, as to defeat and defraud them of their other lawfull titles: therefore by a ſtatute made at Marlebridge Anñ 52.H.3. it was enacted, That if any man do enfeoffe his eldeſt ſonne or heire, being within age of his inheritance, that thereby the Lord might loſe his wardſhip, yet notwithſtanding ſuch feoffement, the chiefe Lord ſhall haue his wardſhip. And by the ſaid ſtatute it was further ordained, That if any perſons meaning to demiſe their lands for terme of certaine yeares (that they might thereby defeate the Lords of the fee of their wardſhips) will faine falſe feoffements, containing, that they are ſatiſfied of the whole ſeruice due vnto them, vntill a certaine terme, and that ſuch feoffees are bound to pay at the ſaid term a great ſumme, to the value of the ſame lands, or much aboue, ſo that after the ſaid terme the land ſhall reuert to them or their heires, for that no man will deſire to hold the ſame of ſo great a price, yet by ſuch fraud no chiefe Lord ſhall looſe his wardſhip. And if the chiefe Lords do by iudgement of the Court recouer their wardſhips, yet the feoffees ſhall haue their action reſerued, to recouer their terme or fee, when the heires ſhall come to their lawfull age. And for the further preuention of couin in auoiding of wardſhips, by one other ſtat. made Anñ 34.H.8. it was ordained: That if any perſon or perſons hauing eſtate of inheritance, of or in any Mannors, lands, tenements, or hereditaments, holden of the King by Knights ſeruice, in chiefe, or otherwiſe of the King by Knights ſeruice, or of any other perſon or perſons by Knights ſeruice, haue giuen St.52.H.3.6. St.34.H.8.36

uen at any time ſince the 20. day of July Anno 32. H. 8. & Anno Dom 1540. or hereafter ſhal giue, will, deuiſe, or aſſigne by will or other act executed in his life, his manners, lands, tenemẽts, or hereditaments, or any of them by fraud or couin to any other perſon or perſons, for terme of yeares, life, or lines, with one remainder ouer in fee, or with diuers remainders ouer for terme of yeares, life or lines, with one Remainder ouer in fee ſimple to any perſon or perſons, or to his or their right heires: Or at any time ſince the ſaid 20. day of July, hath conueyed, or hereafter ſhall conuey, or make by couin (contrarie to the true intent of the Act prouided 34. H. 8. for the making of Wils) any eſtates, conditions, meſnalties, tenures, or conueyancs, to the intent to defraud or deceiue the King of his Prerogatiue, primer ſeiſin, liuerie, reliefe, wardſhips, mariages, or rights; or any other Lords of their wardſhips, reliefes, heriots, or other profits which ſhould or ought to accrue, growe or come vnto them, or any of them, by or after the death of his or their tenant, by force and according to the Statutes made 32. H. 8. 1. and 34. H. 8. 5. and the ſame eſtates, and other conueyances being found by office to be ſo made by couin, fraud, or deceit, contrary to the true intent of the ſaid Acts: Then the king ſhall haue as well the wardſhip of the bodie, and cuſtody of the lands &c. as liuerie, primer ſeiſin, reliefe and other profits, which ſhould or ought to appertaine to him, according to the true meaning of the ſaid acts, as though no ſuch eſtates or conueyances by couin had neuer bene had or made, vntill the ſaid office be lawfully vndone by trauerſe or otherwiſe. And the other Lord any Lords of whom any ſuch lands &c. ſhall be holden by Knights ſeruice, as is aforeſaid, ſhall haue their remedy in ſuch caſes, for his or their wardſhips of bodies, and lands, by writ of right of ward, and ſhall diſtraine & make anowry or cogniſance by themſelues or their bailifes for their reliefes, heriots, and other profits, which ſhould haue bene to them due, by or after the death of their tenant, as if no ſuch eſtate or conueyance had bene had or made: Sauing the right and title of the donées, feoffées, leaſées, and deuiſées thereof againſt the ſaid deuiſor and his heires, after the intereſt and title to the King or other Lord therein ended.

24 If the father doe make a feoffement of his lands holden by knights ſeruice to his eldeſt ſonne, then by the foreſaid ſtatute of Marlebridge the Lord of whom the ſame lands be holden is in poſſibilitie to haue the wardſhip of the ſaid ſonne, if the father die, his ſaid ſonne being within age. But if the ſame ſonne do after make a feoffement of the ſame land to an other bona fide, and after the father doth die, leauing his ſonne within age, there this poſſibilitie is deſtroyed: for that the ſtranger who had no notice of this fraud, hath purchaſed the land bona fide, and therefore ſhall ſuſtaine no preiudice by it. And yet in that caſe, if the ſonne had made the feoffement after the fathers death, this alienation had not depriued the Lord of his wardſhip, which was once lawfully deuolued vnto him.

Fitzh. Colluſion 29. 33. H. 6. 14. Co. lib 1. 123.

Co. lib. 2. 94.

He that is not party to a fraud ſhall ſuſtaine no loſſe.

25 And it is a deceit, colluſion, and defrauding of the law and a great diſheritance, and preiudice to the Lords of the Fee of whom any lands be holden, to giue the ſame lands in Mortmaine, or to doe any act, or procure any thing to be done, whereby they may come into Mortmaine, contrarie to the ſtatutes of Magna Charta, 7. Ed. 2. 13. Ed. 1 15. R. 2. and 32. H. 8. for the Lords doe loſe the wardſhips, mariages, reliefes, and other ſeruices of their Tenants by that meanes. And therefore by the ſtatute of Weſt. 2. it was enacted, That if any Religions or Eccleſiaſticall perſon doe implead an other, by a reall action

of

of land, and the Tenant will make default after default, whereby he ought to loſe the land. Then he which doth recouer, ſhall not haue Execution of the ſame Land recouered, vntill he hath ſued forth the kings writ of Quale ius directed to the Eſcheator of the ſame countie, to make enquirie by a Jurie, what right hée that recouered the land hath to the ſame: And if hée hath right, iudgement ſhall be giuen for him, and he ſhall haue execution of the ſame land: And if it be found that he hath no right to recouer by his ſaid action, but that the lands were loſt by colluſion betweene him, and the tenant of the land, then the land ſhal accrue to the next Lord of the fée, if he demand it within a yéere next after the Enqueſt taken: And if he doth not demaund it within a yeare, it ſhall accrue to the next Lord aboue, if he demaund it within halfe a yeare after the ſame: And ſo euery Lord after the next Lord immediat ſhall haue halfe a yeare to demaund it ſucceſſiuely, vntill it come to the King, to whom through the default of other Lords the land ſhall accrue: For this recouerie of land by default, by a compact and couin before agréed vpon, betweene the demaundant being a religious or Eccleſiaſticall perſon, and the tenant, is to defraud the intent and meaning of the Statutes of Magna Charta, and Anno 7. Ed. 1. whereby it was ordained, That if any religious perſon, or other whatſoeuer, will buy or ſell any lands or tenements, or will receiue the ſame by colour of any gift, or leaſe, or by reaſon of any other title whatſoeuer, or will by other practiſe or deuiſe procure the ſame to himſelfe, whereby ſuch lands or tenements may come into mortmayne, he ſhall forfeite the ſame lands. And by the equitie of the foreſaid Statute of Weſtminſter 2. if any Eccleſiaſticall perſon doe recouer land againſt another by reddition, confeſſion, or action tried, yet the colluſion ſhall be inquired of, for that the ſame recouerie may be by colluſion before had betweene the demaundant and the tenant. And becauſe that by feoffements, fines, recoueries, and other aſſurances made of truſt of lands to the vſe of parish Churches, Chappels, Guildes, Fraternities &c. there groweth to the King, & other Lords, and ſubiects of the Realme, the like loſſes, & inconueniences, and is as much preiudiciall to them, as doth and is where lands be alienes in mortmaine: Therefore for the eſchuing and anoydance of them, by a ſtatute made Añ 23. H. 8. it was enacted, That all feoffements, fines, recoueries, wills, and other eſtates deuiſed, or in any wiſe made of truſt, of any mannors, lands, tenements or hereditaments, to the vſe of any parish Churches, Chappels, Churchwardens, Guildes, Fraternities, or brotherhods erected or made of deuotion, or by common aſſent of the people, without any corporation: Or that the Feoffées, Coniſées, Recouerées, or other perſons, and their heires thereof ſeiſed, ſhall take, leuie, or perceiue, or cauſe to be taken &c. the iſſues & profits thereof, & the ſame to diſpoſe, or otherwiſe imploy, or ſuffer or cauſe to be paid, diſpoſed, or imploied to any of the foreſaid vſes, or to any of the like vſes (aboue the terme of 20. yeares next after the firſt making and beginning of any ſuch vſes (ſhall be vterly voide. But for the preuenting of colluſion and fraud which might be deuiſed for the further eſtabliſhing or corroboration of ſuch vſes, by the ſaid ſtatute of Añ 23. H. 8. it was moreouer prouided, That if any perſon or perſons in defraud of the ſaid Statute, doth bind, or ordaine any of their heires or ſucceſſors, or any other perſons, that they ſhall ſuffer ſuch vſes, intents or purpoſes to continue, contrarie to the ſaid ſtatute, vpon paine of loſſe of any other lands, or of any other thing: or doe deuiſe by any colour, craft, or meanes any thing to make ſuch vſes declared contrarie to the meaning of the ſayd Act to continue for any longer time then is aboue limitted for the ſame:

Then

Deceit and Colluſion to bring land into mortmaine.

Lands aſſured in Mortmain to churches, chappels, Guilds, &c.

Collaterall conueyances to defraud the aſſurance to Churches.

St. 13. Ed. 1. 31.

St. 9. H. 3. 37.

Sta. 7. E. 1.

3. E. 4. 14.

So. 23. H. 8. 10.

Then euery ſuch penaltie, craft, colour, and euery other thing that is made or deuiſed in defraud of the ſaid act, ſhall be voide: for the ſaid Statute ſhall be interpreted as beneficially as may be to the deſtruction, or vtter auoiding of the vſes aboue remembred, and of all other then ſuch as are before expreſſed. Notwithſtanding the foreſaid Statute of Añ 23. H. 8. it is lawfull for any perſon at this day to giue his lands, tenements, or hereditaments to any perſon or perſons, & to his or their heires, for to find a preacher, for the maintenance of a Schoole, for the reliefe of maihemed ſouldiers, for the ſuſtentation of poore people, for the reparation of Churches, Highwayes, Bridges, Cawſeis, for the diſcharge of the poore inhabitants of a Towne of common charges, for to make a ſtock for poore labourers in huſbandrie, & poore apprentices, for the mariage of poore maids, or for ſuch other charitable vſes: for the ſaid ſtatute was made only to reſtraine the aſſuring of lands to ſuperſtitious vſes, and not to charitable vſes. And in this caſe it ſhall be expedient that the feoffor which doth aſſure his land to any of the vſes aforeſaid, do reſerue to himſelfe ſome annuall rent, or take ſome money of the feoffées at the firſt, for then the feoffement or aſſurance ſhalbe good to the feoffées, and their heires, though the vſe be vnlawfull. And it appeareth by the ſtatute made Añ 43. El. that they be accounted good and charitable vſes, and no ſuperſtitious vſes, to giue lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, mony, and ſtocks of money for the reliefe of aged, impotent, and poore people: or for the maintenance of ſick and maihemed ſouldiers, & mariners, ſchooles of learning, free ſchooles, and ſchollers in Vniuerſities: or for repaire of bridges, ports, hauens, cawſeys, churches, ſea-banks, & high wayes: or for education or preferment of orphans: or for or toward reliefe, ſtocke, or maintenance for houſes of correction: or for mariage of poore maids: or for ſupportation, help, and ayd of yong traues-men handicrafts-men, and perſons decayed: or for reliefe or redemption of priſoners or captiues: or for aide or eaſe of any poore inhabitants concerning payment of Fifteens, ſetting out of ſouldiers, and other tares. For the ſaid ſtatute of 43. El. doth giue authority to the L. Chauncelor, the L. Keeper &c. & to the Chauncelor of the Dutchie, to award Commiſſions from time to time into all or any parts of this Realme to certaine perſons, to inquire of all and ſingular ſuch gifts, aſſignements, & appointments, and of the abuſes, breaches of the truſts, negligences, miſimployments, not imploying, concealing, defrauding, miſconuerting, or miſgouernment of any lands, tenements, rents, &c. goods, chattels, money, &c. heretofore giuen or aſſigned, or which hereafter ſhalbe giuen, limitted, or aſſigned, to or for any the charitable or godly vſes before rehearſed: And after ſuch enquiry, hearing, & examining thereof, to ſet down ſuch orders, iudgements, & decrées, as the ſame lands, tenements, rents, goods, money, &c. may be duly & faithfully imployed, to and for ſuch of the charitable vſes and intents aforeſaid reſpectiuely, for which they were giuen or appointed by the donors and founders thereof.

Co. lib. 1. 26.

To what vſes lands may be giuen.

St. 43. El. 4.

26 Becauſe when tenants for terme of life, tenants in dower, or by the curteſie of England, or tenants after poſſibilitie of iſſue extinct were impleaded, they would often be of couin with the demandants, that the tenements demanded ſhould be recouered againſt them, and they would not pray in ayd, nor vouch to warrantie them in the reuerſion, but plead in chiefe ſuch a plea whereby they knew the tenements ſhould be loſt: for the preuention and eſchewing of which couin, by a ſtat. made Añ 13. R. 2. it was ordained, That if any ſuch tenant be impleaded, and he in the reuerſion come into the Court,

St. 13. R. 2. 16

and

and prayeth to be receiued to defend his right at the day that the tenant doth plead to the action, or before, he ſhal be receiued to plead in chiefe to the action, without taking delay by voucher, ayd-prayer, nonage, or other delay whatſoeuer, ſo that after ſuch receipt, he ſhall haue no delay by protection, eſſoine of the Kings ſeruice, or common Eſſoine, but the ſute ſhalbe haſtened as much as it may be by the law: And dayes of grace ſhalbe giuen by diſcretion of the Iudges betwixt the demaundant and him which is receiued, and not the common dates giuen in pleas of land (except the demaundant will thereunto aſſent) to the intent the demaundant ſhal not be too much delaied which muſt plead with two aduerſaries: And he in the Reuerſion which prayeth to be receiued ſhall finde ſuerties for the iſſues of the Land, aſwell where the receit is counterpleaded, as where it is graunted. And by the Statute of Weſtminſter 2. it was eſtabliſhed: That if by default, or yeelding of ſuch tenant in dower, or &c. iudgement ſhall be giuen, then the heyres, or they which haue the reuerſion ſhall recouer after the death of ſuch tenants by a writ of Entrie Ad communem legem. And by the ſame Statute of Weſtminſter 2. it is alſo ordained, That if in an Action, brought againſt the huſband and the wife of lands which be the right of the wife, the huſband will abſent himſelfe, and will not defend his wines right, or will againſt his wines conſent yeeld the land: If the wife will come before iudgement, and be ready to anſwere to the demaundant and to defend her right, ſhe ſhall be thereunto admitted. And for the further auoiding of Couin in Recoueries ſuffered by particular tenants, by the Statute of Anno 14. Eliz. it was enacted, That all recoueries to be had or proſecuted by agreement of the parties, or by Couin, againſt any tenants by the Curteſie of England, Tenants in taile after poſſibilitie of iſſue extinct, or otherwiſe onely for the terme of life, or lines, or of eſtates determinable vpon life or liues, of any Lands, Tenements, or hereditaments, whereof the ſame particular Tenant is or ſhall be ſeiſed of any ſuch particular eſtate, as is aforeſaid or againſt any other with Voucher ouer of any ſuch particular Tenaunt, or of any hauing or that had right or title to any ſuch particular eſtate, or tenauncie as is aforeſaid, ſhall as againſt ſuch perſon or perſons to whom any reuerſion or remainder thereof, by force of any conueyance or deuiſe before that time had or made, ſhall, ought, or lawfully may appertain, and againſt their heyres and ſucceſſors be vtterly voide. Prouided alwaies that this Act ſhall not extend to any perſon or perſons that ſhall by good title recouer any lands, tenements, or hereditaments, without fraud or Couin, by reaſon of any former right or title: But all and euery ſuch recouerie and recoueries vpon former rights and titles ſhall ſtand and be in like force, as they were before the making of this Acte. And in all and euerie recouerie and recoueries to be had or proſecuted of any lands, tenements or hereditaments by the aſſent and agreement of any perſon, or perſons to whom any reuerſion or remainder thereof then ſhall or ought to appertaine (ſo that the ſame aſſent and agreement doe appeare of record in any of the Kings Courts) ſhall ſtand in like ſtrength, and of like effect againſt ſuch perſon and perſons that ſhall ſo aſſent and agree, their heyres, and ſucceſſors, as they were before the making of this act.

Couin by a particular tenant to defraud him in the reuerſion.

Stat Weſt. 2. 13. Ed. 1. 3.

The wines receit vpon the huſbands deſault.

Recoueries againſt particular tenants by Couin to defraud him in the reuerſion.

Sta. 14. El. 8.

27 And for that Couin and fraud ſhould be reſtrained and puniſhed when it ſhall be put in practiſe or intended by thoſe in reuerſion to deſeate their Leſſes of their termes for yeares, as it was by the aforeſaid Statutes, when it was executed by particular Tenants, to the preiudice or diſheritance

of

Sta. 21. H. 8. 21. Sta. 6. Ed. 1. 11.

of them in the reuerſion: Therefore by a ſtatute made Añ 21. H. 8. it was enacted, That if any perſons do make Leaſes of their lands, tenements, or other hereditaments by Indentures, or without writing to other perſons, for terme of yeates, if after the ſame Leſſors, their heires or aſſignes, do cauſe or ſuffer recoueries to bee had againſt them in the Kings, or any other Lords Court, vpon fained and vntrue title, by craft and couyn to put the ſaid Termors from their termes: all ſuch Termor ſhall and may falſifie for his terme only ſuch recouerie, in ſuch wiſe & forme, as a tenant of freehold ſhall and may do by the courſe of the common law, where ſuch tenant was neither priuie, nor party to ſuch recouerie. And the ſame Termors, their executors and aſſignes, notwithſtanding ſuch recouerie ſo had, ſhall enioy, retaine, and hold their ſaid termes, according to their ſaid leaſes, againſt all ſuch recouerors, their heyres, and aſſignes. And the ſaid recouerers, their heyres, and aſſignes after ſuch recouerie ſo had, ſhal haue like remedy againſt the ſaid termors, their Executors and aſſignes by auowrie, or action of debt for the rents and ſeruices reſerued vpon the ſame leaſes, being due after the ſame recoueries, & alſo like actions againſt them for waſt done after the ſame recoueries ſo had, in like manner and forme, as the ſaid Leſſors ſhould or might haue had, if the ſame recoueries had neuer beene had. No manner of Statute of the Staple, ſtatute marchant, nor execution by Elegit, ſhal be auoided by meanes of any ſuch feyned recouerie, but all perſons hauing any lands, tenements or other hereditaments in execution, or being intituled to haue execution of any lands or tenements by any ſuch meanes, ſhall haue like remedie to auoide and falſifie the ſame recouery, as before is prouided for the leſſee for terme of yeates.

Couin by him in the reuerſion to defeat his Leſſee for yeares.

Couin to auoid a Statute or Recognizance.

28 There haue beene many lawes and Statutes deuiſed from age to age, to reſtraine and punish ſeuerall ſorts of deceits, couins, colluſions and frauds, but moſt to encounter and check fraudulent deeds contriued of malice or guile, to defeate, delay or hinder others of their lands, leaſes, goods, cattels, debts, &c. as it appeareth by the ſtatute made Añ 50. Ed. 3. 2. R. 2. 2. R. 2. 3. H. 7. 13. El. & 27. El. But as deceit and fraud increaſed in this realme, ſo new penalties, and greater punishments were inuented from time to time to inflict vpon the tranſgreſſors therein. And becauſe fained, couenous, and fraudulent Feoffements, gifts, graunts, alienations, conueiances, bonds, ſuits, iudgements, and executions of lands & tenements, goods, and cattels being deuiſed of Couin and guile, to defraud creditors, & others of their iuſt and lawfull actions, debts &c. be not only to the let of the due courſe and execution of law, & iuſtice, but alſo to the ouerthrow of all true and plaine dealing, bargaining, and cheuiſance betweene man and man, without the which no common weale, or ciuill ſocietie can be maintained or continued: Therefore by a Statute made Añ 13. El. it was enacted; That all and euery Feoffement, gift, graunt, bargaine, alienation, and conueyaunce of lands, tenements, hereditaments, goods, & cattels, or of any of them; or of any leaſe, rent, common or other profite or charge out of the ſame lands, hereditaments, goods, &c. or any of them by writing or otherwiſe; And all and euery bond, ſute, iudgement, & execution at any time had or made, ſithence the beginning of Queene Elizabeths raigne, or at any time hereafter to be had or made, which haue beene, and are deuiſed, and contriued of malice, fraud, couin, colluſion, or guile, to the intent, &c. to delay, hinder, or defraud, creditors, & others of their iuſt & lawfull actions, ſutes, debts, accompts, damages, penalties, forfeitures, harriots, mortuaries, or reliefes, ſhall be taken and deemed only as againſt the perſon, his heires, executors, ſucceſſors, or aſſignes

Sta. 50 E. 3. 6. 1. R 2. 9. 2. R. 2. 3. 3 H. 7. 4. 13. Eliz. 5. 27. Eliz. 4.

Sta. 13. Eliz. 5. Sta. 29. Eliz. 6.

Fraudulent deeds to auoid other mens debts and duties.

whoſe actions, ſutes, debts, accounts &c. by ſuch guilefull, couenous, or fraudulent deeds, deuiſes, practiſes as is aforeſaid, are, ſhall, or mought be in any wiſe diſturbed, hindered, delayed, or defrauded, to be cleerly void and of none effect, any colour, fayned conſideration, exprelling of vſe, or any other matter to the contrary notwithſtanding: And all & euery the parties to ſuch fained, or fraudulent feoffement, gift, graunt, alienation, bargaine, conueyance, bond, ſute, iudgement, execution, &c. or being priuie and knowing of the ſame, or any of them, which ſhall willingly and wittingly, put in vre, auowe, maintaine, iuſtifie, or defend the ſame, or any of them, as true, ſimple, and done or made bona fide, vpon good conſideration, or ſhal alien, or aſſign any the lands, tenements, goods, leaſes, &c. to them conueyed, or any part thereof, ſhall forfeit to the Quæn &c. and the party grieued by ſuch fraudulent feoffement, gift, bond, ſuit, &c. one yeares value of the ſaid lands, &c. leaſes, rents, or other profits, and the whole value of the ſaid goods and cattels, and ſo much money as ſhall be contained in ſuch couenous and fayned bond, to be recouered by A. I. B. P. &c. wherein no W. E. P. &c. And being thereof lawfully conuicted, ſhall ſuffer impryſonment one halfe yeare, without Baile or Mainprize. But common Recoueries had againſt Tenant in taile, or other tenant of the freehold of lands, the Reuerſion or Remainder, or right of Reuerſion or Remainder whereof then ſhall bee in any other perſon, ſhall as touching ſuch perſon and his heires, which hath the Reuerſion or Remainder thereof, be of like force, and none other, as the ſame ſhould haue been if this Act had not beene made: And no eſtate or conueyance, by reaſon whereof any perſon ſhall vſe any voucher in any writ of Formedon, ſhall bee made void by this Act: But euery ſuch voucher in any writ of Formedon, ſhall be of like force, as if this act had not beene made. Prouided alwayes that this Statute ſhall not extend to any eſtate or intereſt in lands, leaſes, goods, &c. lawfully aſſured vpon good conſideration, and bona fide, to any perſon or perſons, bodies politique or corporat, not hauing at the time of ſuch conueyance &c. any knowledge of ſuch fraud or colluſion, as is aforeſaid.

Parties to fraudulent deedes.

Common Recoueries.

Voucher in Formedon.

Lands or goods aſſured bona fide, and vpon good conſideration.

29 If a man to preuent a forfeiture for a felonie, or vpon an outlarie, will make a gift of all his goods, and after is attainted of Felonie, or outlawed, theſe goods ſhall be forfeited, notwithſtanding this gift: for this word forfeitures ſpecified in the foreſaid Statute of An 13. Eliz. ſhall not be intended onely of the forfeiture of an Obligation, Recogniſance, or ſuch like, but alſo of euery thing which by the Law may be forfeited to the King, or to a Subiect. And the ſame Act of Anno 13. Eliz. ſhall not extend onely to creditors, but alſo to all others, who haue cauſe of action, or ſuit, or to haue any penaltie or forfeiture. And if a man do bind himſelfe & his heires to pay to an other a certaine ſumme of money at a day aſſigned, and before the day doth come of paiment, the obligor dieth, leauing to his ſonne and heire ſufficient land to pay the ſame debt, & the heire doth enter and alien the ſame land before the obligee doth commence his ſuit vpon the ſaid Obligation: If vpon the ſuit of the ſame obligation the heire do plead nothing by diſcent, and vpon the triall of that iſſue, the foreſaid alienation be found by the Iurie to be made by fraud to deceiue the ſaid creditor of his debt, or that be pleaded, the ſaid alienation ſhall be voide by the foreſaid ſtatute of 13. Eliz. and the plaintife ſhall recouer.

Fraudulent deeds to auoid forfeitures.

Co. lib. 3. fo.

St. 13. El. 5.

Co. lib. 5. 60.

A deed of gift muſt be vpon good conſideration, and bona fide.

30 In the ſaid Statute of Anno 13. El. there is one Prouiſo, That the ſaid Act ſhall not extend to any eſtate or intereſt in lands, tenements, or hereditaments,

St. 13. El. 5.

ments, leaſes, rents,, commons, profits, goods, or cattels, which is, or hereafter ſhall be lawfully had, made, conueyed, or aſſured vpon good conſideration, & bona fide to any perſon or perſons, or bodies politique or corporat, not hauing at the time of ſuch conueyance or aſſurance to them made any maner of notice or knowledge of ſuch couin, fraud, or colluſion. By which prouiſo it appeareth that the gift which is within the compaſſe of the ſame Prouiſo, muſt be both vpon good conſideration, and alſo bona fide. And therefore, whereas A. did owe to B. C. D. and to L. a hundred pounds, payable by two ſeuerall obligations, L. brought an Action of debt againſt A. vpon his ſaid obligation of a hundred pound, during which ſute A. being poſſeſſed of goods and cattels, to the valew of two hundred pounds, in ſecret made a generall deede of gift by writing, of all his goodes and cattels, Reals and Perſonalls whatſoeuer, to B. in ſatisfaction of his debt, and notwithſtanding A. continued in poſſeſſion of the ſame goods, and ſold ſome of them, and did ſhare and brand the ſheepe with his owne brand: and after L. had iudgement to recouer againſt A. and had a Fieri facias directed to the Shriffe of the Countie where A. dwelt, who by force of the Writ came to make execution of the ſame goods; but B. reſiſted him by force, clayming thoſe to be his goods, in reſpect of his ſaid deede of gift, and reported that it was a good deed of gift, and made vpon lawfull conſideration: But in the Starre-chamber this was adiudged a fraudulent deede, and within the ſtatute of 13. Eliz. for this deed of gift had all the badges & markes of fraud: for it was generall, and without any exception of his apparell, bedding, or any other neceſſary thing: and the owner continued in poſſeſſion of all the goods, and vſed them as his owne: and the deede of gift was made in ſecret, and not ſealed, deliuered, nor publiſhed amongſt his neighbours: And if it was made whileſt the ſute was depending betweene L. and A. And here was a truſt betweene the Donor of theſe goods and the Donee, for the Donor poſſeſſed the goods, and vſed them as his owne; and fraude is alwaies ſhadowed with truſt, and truſt is the couer of fraud: and the writing purported, that the deede was made honeſtly, truely, and Bona fide, which be not accuſtomed words in a deed of gift; and vnuſuall termes in any Inſtrument doe breed ſuſpition. And though this was a true debt due to B. & the conſideration was good, yet this was not within the before ſpecified Prouiſo, for that the deede of gift was not made alſo Bona fide; for no deede ſhall be adiudged to be made Bona fide according to the ſaid Prouiſo, which is accompanied with any truſt: and the words of the Prouiſo be in the copulatiue, vpon good conſideration and Bona fide: ſo that good conſideration will not ſerue, vnleſſe the gift be alſo Bona fide, viz. to the intent, that the Donee ſhall haue, carry away, and enioy to his owne vſe the poſſeſſion of the ſame goodes, without any truſt expreſſed, or implied: and therefore whoſoeuer will make a deede of gift of goods to an other in ſatisfaction of his debt, or for any other reaſonable cauſe, and will eſchew therein the ſuſpition and queſtion of fraude, or of a fraudulent gift, it is expedient for him to make the ſame deede openly, and before his neighbors, or ſome men of credite in thoſe partes where he doth liue, and not in any ſecret place, or before witneſſes of ſmall credite, or vnknowne in that Countrie; and further, that the goods which ſhall be alienes by that deede of gift be ſet downe in particular, and prayſed to the vttermoſt value by indifferent perſons, or ſeene that they be of the ſame value, and that the party to whom the gift is made doe preſently take them into his owne poſſeſſion, and carry them away: for to leaue them in the Donors poſſeſſion is an vndoubted argument of truſt: which truſt is a principall baſe of fraude and deceit: for though be-

Co. lib. 3. 80.

Infallible markes of a fraudulent deede of gift.

How a deed of gift may be made without fraude.

twéene the Donor and the Donée the truſt hath a pleaſing and godly ſhew of confidence, and faithfull and true dealing: yet betwéene the ſame Donor and his Creditors, it is méere fraud and deceit: for the Donor maketh his déede of gift of truſt, hoping the Donée wil not deceiue him, who by the ſelfe ſame déede meaneth to deceiue others. But as a déede of gift muſt be made Bona fide, viz. without any truſt, ſo muſt it be made vpon good conſideration, viz. vpon valuable conſideration: For if a man being in debt to diuers perſons, will make a déede of gift of his goods to his ſonne, his nephew, or neare kinſman in blood, and deliuer poſſeſſion thereof, and the Donée doth take and carrie away the goods, and imployeth them to his owne vſe; In this caſe the déede is made bona fide, for that the Donée hath taken and carried away the goods, & it is made vpon good conſideration, viz. conſideration of Nature, and blood, but it is not made vpon valuable conſideration, for money paid, or wares deliuered, according to the intent and meaning of the Prouiſo aforeſaid, And further, though héere is no truſt expreſſed, by the Donor in the Donée, yet the Law doth intend that there is a truſt implied betwéene the Donor and his ſonne, nephew, or neare kinſman, to whom he hath made this déede of gift, and therefore accompteth it voyde againſt Creditors, &c.

A déed of gift muſt bée made vpon valuable conſideration.

31 Foraſmuch as diuers perſons after conueiances obtained, and purchaſes made of lands, tenements, leaſes, eſtates, and hereditaments for money, or other good conſiderations, may receiue great preiudice by reaſon of fraudulent and couenous conueiances, eſtates, gifts, graunts, charges, and limitations of vſes before made, of, in, or out of lands ſo purchaſed: which ſaid gifts, graunts, &c. are or ſhall be meant by the parties that ſo make the ſame to be fraudulent and couenous, of purpoſe and intent, to deceiue ſuch as ſhal purchaſe the ſame: or elſe, by the ſecret intent of the parties, the ſame be to their own proper vſe, and at their free diſpoſition, coloured neuertheleſſe by a fained countenance & ſhew of words and ſentences, as though the ſame were made bona fide, for good cauſes, and vpon iuſt and lawfull conſiderations: For the remedie of which inconueniences, and for the auoiding of ſuch fraudulent, fained, and couenous conueiances, gifts, graunts, charges, vſes, and eſtates, and for the maintenance of iuſt and vpright dealing in purchaſing of lands, &c. by a Statute made Anno 27. Eliz. it was ordained, That all and euery conueyance, graunt, charge, leaſe, eſtate, incumbrance, and limitation of vſe or vſes, of, in, or out of any lands, tenements, or other hereditaments whatſoeuer, had or made at any time heretofore ſithence the beginning of the Quéenes raigne that now is, or hereafter to be had or made, for the intent, and of purpoſe to defraud and deceiue ſuch perſon or perſons, bodies politike, or corporat, as haue purchaſed, or ſhall afterwards purchaſe in fée ſimple, fée taile, for life, liues, or yeares, the ſame lands, tenements, and hereditaments, or any part or parcell thereof, ſo formerly conueyed, granted, leaſed, charged, incombred, or limited in vſe; or to defraud and deceiue ſuch as haue, or ſhall purchaſe any rent, profit or commoditie, in, or out of the ſame, or any part thereof, ſhall be déemed and taken only as againſt that perſon and perſons, bodies politik, and corporat, his & their heires, ſucceſſors, executors, adminiſtrators, and aſſignes, and againſt all & euery other perſon & perſons lawfully hauing & claiming, by, from, or vnder them, or any of them, which haue purchaſed, or ſhal hereafter ſo purchaſe for mony, or other good conſideration, the ſame lands, tenements, or hereditaments, or any part or parcell thereof, or any rent, profit or commodity, in or out of the ſame, to be vtterly voide, fruſtrate, and of none effect: Any pre-

A Fraudulent aſſurances to deceiue purchaſors.

Sta. 27. Eliz. 4. Sta. 39. Eliz. 18.

tence,

tence, colour, fained conſideration, or expreſſing of any vſe or vſes to the contrary notwithſtanding.

Sta. 27. El. 4. All & euery the parties to ſuch fained, couenous, & fraudulent gifts, grants, leaſes, charges, or conueiances before expreſſed, or being priuie, and knowing of the ſame, or any of them, which ſhall wittingly put in vre, auow, maintaine, iuſtifie, or defend the ſame, or any of them, as true, ſimple, and done, had or made Bona fide, or vpon good conſideration, to the diſturbance, or hinderance of the ſaid purchaſer or purchaſers, leaſees, or graunees, or of, or to the diſturbance or hinderance of their heires, ſucceſſors, executors, adminiſtrators, or aſſignes, or ſuch as haue, or lawfully claime any thing, by, from, or vnder them, or any of them, ſhall incurre the penaltie and forfeiture, of one yeares value of the ſaid lands, tenements, and hereditaments ſo purchaſed or charged: The one moitie whereof to be to the Queene, her heires, and ſucceſſors, and the other moitie to the partie or parties grieued, by ſuch fained and fraudulent gift, graunt, leaſe, conueyance, incumbrance, or limitation of vſe, to be recouered in any of the Q. Courts of Record, by Action of debt, B. P. or I. wherein no E. P. or Wl. &c. And alſo being thereof lawfully conuicted, ſhall ſuffer impriſonment for one halfe yeare without baile or mainprize.

B Parties to fraudulent conueiances, which doe auow the ſame.

Sta. 27. El. 4. This Act, or any thing therein contained, ſhall not extend, or be conſtrued to impeach, defeat, make void or fruſtrate any conueiance, aſſignement of leaſe, aſſurance, graunt, charge, leaſe, eſtate, intereſt or limitation of vſe or vſes, of, in, to, or out of any lands, tenements, or hereditaments, heretofore at any time had or made, or hereafter to be had or made vpon, or for good conſideration, and Bona fide, to any perſon or perſons, bodies politike or corporate: any thing before mencioned to the contraris hereof notwithſtanding.

C Conueiances made vpon good conſideration, and Bona fide.

Sta. 27. El. 4. If any perſon or perſons haue heretofore ſithence the beginning of the Raigne that now is, made, or hereafter ſhall make any conueiance, gift, grant, demiſe, charge, limitation of vſe or vſes, or aſſurance, of, in, or out of any lands, tenements, or hereditaments, with any clauſe, prouiſion, article, or condition of reuocation, determination, or alteration, at his or their will or pleaſure, of ſuch conueiance, aſſurance, grants, limitations of vſes or eſtates, of, in, or out of the ſaid lands, tenements, or hereditaments, or of, in, or out of any part or parcell of them, contained or mencioned in any writing, deede, or Indenture of ſuch aſſurance, conueiance, grant, or gift, and after ſuch conueiance, grant, gift, demiſe, charge, limitation of vſes or aſſurance, ſo made or had, ſhall or doe bargaine, ſell, demiſe, grant, conuey, or charge the ſame lands, tenements, or hereditaments, or any parcell thereof, to any perſon or perſons, bodies politike or corporate, for money or other good conſideration paid or giuen, the ſaid firſt conueiance, aſſurance, gift, grant, demiſe, charge or limitation not by him or them reuoked, made voide, or altered, according to the power and authoritie reſerued, or expreſſed vnto him or them, in and by the ſaid ſecret conueiance, aſſurance, gift, or grant: Then the ſaid former conueiance, aſſurance, gift, demiſe, and grant, as touching the ſaid lands, tenements, and hereditaments ſo after bargained, ſold, conueied, demiſed, or charged, againſt the ſaid bargainees, vendees, leſſees, grantees, and euery of them, their heires, ſucceſſors, executors, adminiſtrators, and aſſignes, and againſt all and euery perſon and perſons, which haue, ſhall, or may lawfully claime any thing, by,

D Conueiances with condition of reuocation or alteration.

from, vnder them, or any of them, ſhall be deemed, taken, and adiudged to be void, fruſtrate, and of none effect by vertue and force of this preſent Act.

E
Mortgages.

Prouided neuertheleſſe, that no lawfull mortgage, made or to be made Bona fide, and without fraud or couin vpon good conſideration, ſhall be impeached or impaired by force of this Act, but ſhal ſtand in the like force & effect, as the ſame ſhould haue done, if this Act had neuer beene had or made: Any thing &c. Sta. 27. El. 4.

F
Aſſurances of lands defeated before the ſtatute.

This Act, nor any thing therein contained, ſhall extend or be conſtrued to make good any purchaſe, grant, leaſe, charge, or profit, of, in, or out of any lands, tenements, or hereditaments, heretofore made void, defeated, or vndone, by reaſon of any former conueiance, graunt, or aſſurance, ſo as the partie or parties, or their heires or aſſignes, which haue ſo defeated, or made void the ſame, were in actuall poſſeſſion, the firſt day of this preſent Parliament, of, or in the ſaid lands, tenements, or hereditaments, whereof, or out of which any ſuch purchaſe, graunt, leaſe, charge, or profite was made. Neither this Act, nor any thing therein contained, ſhall extend in any ſort, to reſtraine or impaire the iuriſdiction, power, or authoritie of the Court of Starre chamber. Sta. 27. El. 4.

The authority of the court of Starre-chamber.

A purchaſor doth know before of a fraudulent deede.

32 If a man ſeiſed of land in fee, do make a fraudulent conueyance thereof, to the intent to deceiue and defraud purchaſors, contrarie to the ſaid Statute of Anno 27. Eliz. and doth continue in poſſeſſion of it, and taketh the profit of it, and doth after enter into communication with a ſtranger for the ſale of it to him: and by chaunce the ſame ſtranger hath knowledge of the ſame fraudulent aſſurance, and notwithſtanding he doth bargaine with the ſame party for his land, doth conclude with him, and taketh his aſſurance from him: in this caſe, the ſame purchaſer, ſhall auoid this former fraudulent conueyance, made by the ſeller of this land, though he had notice thereof before: for the ſaid Act of Anno 27. Eliz. by expreſſe words doth make the fraudulent conueiance voide touching the purchaſor: and ſeeing it is within the expreſſe purview of the ſame Statute, it is to be ſo taken and conſtrued in repreſſing of fraud, and it is not the purchaſors knowledge therof, that doth make the fraudulent conueiance good which the ſaid ſtatute hath made voide. Co. lib. 5. 60

The father maketh a fraudulent leaſe, and the ſonne ſelleth the land.

33 If the father doe make a leaſe for yeares of his land by couin, to defraud others to whom he will demiſe, or ſell the ſame land, (as all fraudulent leaſes ſhall be intended to be made to that end) and before he doth ſell or demiſe the ſame land, he dieth, and his ſonne and next heire knowing, or not knowing of the ſaid leaſe, doth ſell the ſame land for good conſideration: Then the purchaſor ſhall auoide this leaſe by force of the forſaid Statute of Anno 27. Eliz. for ſeeing the Law doth preſume that euery fraudulent leaſe is made generally to defeat purchaſors, leſſees, &c. within this generality euery particular purchaſor, ſarmor, leſſee, &c. is included. And it is not materiall, though he who ſold the land, did not make the former fraudulent leaſe, eſtate, or incombrance: but if the eſtate be fraudulent, the purchaſor ſhall auoide it, whoſoeuer ſelleth the land. Co. lib. 6. 72.

A womans ioynture made by fraud.

34 And the ſame Law is, if a man do conuey land to the vſe of his wife, for her ioynture, by deceit and couin to defraud a purchaſor to whom he intendeth to ſell the ſame land: in this caſe, if the ſame fraud be proued by euidence, or confeſſed by pleading, the purchaſor ſhall auoide the ſaid wines eſtate. Co. lib. 6. 73.

35 Becauſe

35 Becauſe diuers Eccleſiaſticall perſons being poſſeſſed of manſion houſes, and other buildings belonging to their Eccleſiaſticall Benefices, or liuings, did ſuffer the ſame for want of due reparations partly to decay, and partly to fall downe, conuerting the timber, lead, and ſtone to their owne vſes, and alſo made dedes of gift, and colourable alienations, and other conueiances of like effect of their goods and cattels in their life time, of purpoſe after their deaths, to defraud their ſucceſſors of ſuch iuſt Actions and remedies, as otherwiſe they might and ſhould haue had againſt the executors, or adminiſtrators of their goodes, by the Lawes Eccleſiaſticall of this Realme: for the redreſſe whereof by a Statute made Anno 13. Elizab. it was enacted, That if any Archbiſhop, Biſhop, Deane, Archdeacon, Prouoſt, Treaſurer, Chauncellor, Chaunter, Prebendarie, or any other hauing any dignitie or office in any Cathedrall, or Collegiat Church within this Realme, or any Parſon, Vicar, or other Incumbent, of any Eccleſiaſticall liuing, whereunto doe belong any houſes or buildings, which by lawe or cuſtome he is bound to maintaine in reparation, doe ſuffer any of his ſaid houſes or buildings to fall downe, or runne in decay, and after doe make any dede of gift, alienation, or other conueiance of his moueable goodes or cattels in his life time, to the intent after his death to defeate his ſucceſſors of ſuch iuſt Actions and remedies, as otherwiſe they might haue had for the ſame, againſt their executours, or the adminiſtratours of their goodes: Then the Succeſſours of him which ſhal make ſuch dede, &c. ſhall and may commence ſute, and haue ſuch remedie in anie Court Eccleſiaſticall within this Realme, competent for the matter, againſt him or them to whom ſuch dede of gift, or alienation ſhall be ſo made, for the amending and reparation of ſuch Dilapidations, or iuſt recompence for the ſame, as hath happened by his fact or default, in ſuch ſort as he might, ſhould, or ought lawfully to haue, if he or they to whom ſuch dede of giſt were made, were executors of him that made ſuch dede, &c. or adminiſtrators of his goods, &c.

Fraudulent dedes to defeat ſucceſſors of dilapidations.

Sta. 13. El. 10.

Ibid. 1. Iac. 25

36 For the auoiding and preuenting of couin or colluſion in ſuing of Actions popular, which haue been ordained from time to time to reſtraine and puniſh ſeuerall ſorts of offendors: and to the intent that the penalties of thoſe ſtatutes might indeed be impoſed vpon the tranſgreſſors thereof, and the ſame offences might not be ſhadowed, & the meaning of the makers of thoſe ſtatutes might not be deluded by the couenous, deceitfull, and fraudulent ſuites of the ſame offendors friends, whoſe practiſes haue beene to couer, and not to puniſh the ſame offences: by a Statute made Anno 11. H. 7. it was eſtabliſhed, That if an Action popular be ſued againſt anie man by colluſion, and the Plaintife in the ſame doe recouer againſt the Defendant, or be barred; anie other perſon may after ſue againſt the ſame Defendant an other Action popular, with good faith, and ſhall in the ſame recouer and haue Execution, if the Recouerie or barre in the firſt Action be found to be by couin. And the Defendant being attainted of Couin, ſhall haue two yeares impriſonment, by Proceſſe of Capias and Vtlarie, to bee ſued within the yeare after iudgement giuen, or at any time after, vntill the Defendant be had and impriſoned, and that as well at the kings ſute, as at euery other perſons, that will ſue in that behalfe. And no releaſe of anie common perſon, made to any partie before or after an Action popular or indictment hanging, ſhall be auaileable to let or ſurceaſe the ſaid Action, indictment, proceſſe, or execution. Prouided alwayes, that no plaintife or plaintifes be in any wiſe receiued to auer any couin

St. 11. H. 7. 20

An Action popular ſued by Colluſion.

No couin ſhall be anerred where there hath beene triall by verdict.

couin in any action popular, where the point of the ſame Action, or elſe colluſion haue beene once tried, or lawfully found, with, or againſt the plaintife by triall of twelue men, and not otherwiſe.

Fraudulent poſſeſſing of Bankerupts lands, goods, or debts.

37 By the Statute made Anno 13. Elizab. intituled, An Act touching orders for Bankerupts, amongſt other things it is enacted, That if at anie time before, or after that any ſuch perſon (viz. a Bankerupt) departeth the Realme, or ſhall keepe his houſe, or otherwiſe abſent himſelfe, or take Sanctuarie, or ſuffer himſelfe to be arreſted, outlawed, or yeild his bodie to priſon, any perſon or fraudulently by couin claime, demaund, recouer, poſſeſſe, or detaine any debts, duties, goods, cattels, lands, or tenements, by writing, truſt, or otherwiſe, which were or ſhalbe due, or appertaine to any ſuch offendor, other than ſuch as he can, and doth prooue to be due by right and conſcience, for money paied, wares deliuered, or other iuſt conſideration, to the iuſt value thereof before the Commiſſioners thereunto authorized, or the more part of them, and the ſame to proceed (bona fide) without fraud or couin: Then euery ſuch perſon ſo craftily demanding, claiming, hauing, or poſſeſſing any ſuch debt, ſhall forfeit double as much as he ſhall ſo claime, demaund, detaine, or poſſeſſe, which ſaid forfeiture ſhall be recouered, leuied, and imployed for the payment of the Creditors debts. Stat. 13. Eli. 7.

Fraudulent adminiſtration of inteſtats goods.

38 Foraſmuch as it was oftentimes put in vre to the defrauding of Creditors, that ſuch perſons as were to haue the adminiſtration of the goods of others dying inteſtat committed vnto them, if they require it, would not accept the ſame, but ſuffer, or procure the adminiſtration to be granted to ſome ſtranger of meane eſtate, and not of kin to the inteſtate, from whom themſelues, or others by their meanes did take deedes of gift, and authorities by letter of Atturney, whereby they obtained the eſtate of the inteſtate into their hands, and yet ſtood not ſubiect to pay any debts owing by the ſaid inteſtate, and ſo the Creditor for lacke of knowledge of the place of habitation of the Adminiſtrator could not arreſt him, nor ſue him: and if they fortuned to find him out, yet for lacke of abilitie in him to ſatiſfie of his owne goods the valew of that he had conueied away of the inteſtates goods, or releaſed of his debts, by way of waſting, the creditors could not haue or recouer their iuſt and due debts: For reformation whereof by a ſtatute made Anno 43. Eliz. it was ordained, That euery perſon and perſons that hereafter ſhall obtaine, receiue, or haue anie goods or debts of anie perſon dying inteſtate, or a releaſe, or other diſcharge of any debt or duty that belonged to the inteſtat vpon any fraud as is aforeſaid, or without ſuch valuable conſideration as ſhall amount to the valew of the ſame goods and debts, or nere thereabouts (except it be, in, or towards ſatiſfaction of ſome iuſt and principall debt of the valew of the ſame goodes or debts to him owing by the inteſtate at the time of his deceaſe) ſhall be charged and chargeable as Executor of his owne wrong, and ſo farre only as all ſuch goods and debts comming to his hands, or whereof he is releaſed or diſcharged by ſuch Adminiſtrator will ſatiſfie, deducting neuertheleſſe to and for himſelfe allowance of all iuſt, due, and principall debt vpon good conſideration, without fraud, owing to him by the inteſtate at the time of his deceaſe, and of all other payments made by him, which lawfull Executors or Adminiſtrators, may, and ought to haue and pay by the Lawes and Statutes of this realme. Stat. 43. Eli. 8.

Allowance of iuſt debts and other lawfull payments.

39 By a Statute not imprinted, made Anno 27. H. 8. it was enacted, That Stat. 27. H. 8.

That all craftie and fraudulent recoueries, feoffements, eſtates, gifts, grants and leaſes, and euery of them made by any of the chiefe gouernors of ſuch religious houſes, as were giuen to the king by that Statute (viz. of ſuch as had not in lands aboue two hundred pounds by the yeare) vnder their Couent ſeales, within one yeare next before the making of the ſaid Act, ſhould be vtterly void. And by a like Statute made Anno 31. H. 8. it was ordained, That all leaſes of lands, tenements, or other hereditaments not vſually let, leaſes of lands &c. in reuerſion, leaſes of lands &c. not reſeruing the old and accuſtomed rent, ſales of wood, aſſurances of lands of the kings gift, or auncient foundation, without the kings licence made by any abbots, or gouernours of anie Monaſteries or other religious houſes (which were before the making of the ſaid Act diſſolued) within one yeare before the comming to the kings hands of the ſame Monaſteries, religious houſes &c. or which after that ſhould be diſſolued, or come to the kings hands, ſhould be vtterly void: for the ſame leaſes, ſales of wood, and aſſurances were intended to be made by fraud to deceiue the king of certaine commodities which the makers of that ſtatute did meane and intend to giue him.

Fraudulent conueiances of Abbey lands.

Stat. 31. H. 8. 13.

40 Where maidens and women children of noblemen, gentlemen, and others, as well ſuch as were heires apparant to their auncеſtors, as others, hauing left vnto them by their father, and other auncеſtor and friends, lands, tenements and hereditaments, or other great ſubſtance in goodes and cattells moueable, for and to the intent to aduaunce them in marriage ſomewhat like, according to their degrees, and as might be moſt for their ſurety and comfort, as well for themſelues as of all other their friends and kinſfolkes, were oft times vnawares to their ſaid friends or kinſfolkes, by flattery, trifling gifts, faire promiſes (and other ſuch deceitfull and fraudulent practiſes) of many vnthrifty and light perſons, and thereunto by the intreaty of lewd perſons and others, that for rewards bought and ſold the ſaid children, ſecretly allured, and won to contract matrimonie with the ſaid vnthriftie and light perſons, and thereupon either with ſleight or force oft times were taken and conueyed away from their ſaid parents, friends, or kinſfolkes, to the diſpleaſure of God, diſparagement of the ſaid children, and continuall heauineſſe of all their friends. For the redreſſe and preuention whereof, by a Statute made Anno 4. & 5. P. & M. it was enacted, That it ſhall not be lawfull to any perſon or perſons to take or conuey away, or cauſe to be taken or conueyed away any maid or woman child vnmarried, being within the age of ſixteene yeares, out of, or from the poſſeſſion, cuſtody, or gouernance, and againſt the will of the father of ſuch maid or woman child, or of ſuch perſon or perſons to whom the father of ſuch maid or woman child, by his laſt Will, or by any other act in his life time, ſhall aſſigne, bequeath, giue, or graunt the order, keping, education, or gouernance of ſuch maid or woman child: except ſuch taking and conueying away as ſhall be had, made, or done by or for ſuch perſon or perſons as without fraud or couin then ſhall be the maſter or miſtreſſe, or the gardian in ſocage, or gardian in chiualry of or to ſuch maid or woman child.

A

Deceitful conueying a maid inheritabl vnder ſixteene yeres of age.

Stat. 4. & 5. P. & M. 8.

B

If any perſon or perſons aboue the age of fourteene yeares ſhal vnlawfully take or conuey, or cauſe to be taken or conueied any maid or woman child vnmaried, being within the age of ſixteene yeares, out of, or from the poſſeſſion, and againſt the will of the father or mother of ſuch child, or out of, or from the

Stat. 4. & 5. P. & M. 8.

The forfeture for taking away a maid vnder ſixteene yeres of age.

the poſſeſſion of ſuch perſon or perſons as then ſhall haue by any lawful waies or meanes the order, keeping, or education, or gouernance of any ſuch maid or woman child, then euery ſuch perſon and perſons ſo offending being thereof lawfully attainted or conuicted by the due courſe of the law of this realme (other then ſuch of whom ſuch perſon taken away ſhall hold any lands or tenements by knights ſeruice) ſhalbe two yeares impriſoned of his or their bodies without baile or mainprize, or elſe ſhall pay ſuch fine for his or their ſaid offence to the Quéene and party grieued, as ſhall be aſſeſſed by the Quéenes counſell in the Starre-chamber at Weſtminſter.

C

Taking away and deflouring, or cõtracting matrimony with a woman &c.

If any ſuch perſon or perſons ſhall ſo take away, or cauſe to be taken away as is aforeſaid, and defloure any ſuch maid or woman child as is aforeſaid: Or ſhal againſt the will, or vnknowing of, or to the father of ſuch maid or woman child, if the father be in life, or of or to the mother of ſuch maid or woman child (hauing the cuſtody and gouernãce of ſuch child, if the father be dead) by ſecret letters, meſſages, or otherwiſe, contract matrimony with any ſuch maiden or woman child (except ſuch contracts of matrimony as ſhall be made by the conſent of ſuch perſon or perſons as by the title of wardſhip ſhall then haue or be intituled to haue the marriage of ſuch maid or woman child) then euery ſuch perſon or perſons ſo offending, being therof lawfully cõuicted, as is aforeſaid, ſhal ſuffer impriſonment of his or their bodies by the ſpace of 5. yeers, without baile or mainprize, or elſe ſhall pay ſuch fine for his or their offence to the Q. & party grieued, as ſhalbe aſſeſſed by the Quéens counſel in the Star-chamber. Sta. 4. & 5. P. & M. 8.

D

Who may heare and determine theſe offences.

The Quéenes Counſell of the Starre-chamber by bill of complaint or information, and Juſtices of Aſſiſe by inquiſition or indictment, haue authoritie to heare and determine the ſaid offences, vpon euery which indictments and inquiſitions ſuch proceſſe ſhalbe awarded, as vpon an indictment of Treſpaſſe at the common laſt. Sta. 4. & 5. P. & M. 8.

E

A woman conſenting to an vnlawfull contract.

If any woman child, or maiden, being aboue the age of xij. yeares and vnder xvj. do at any time conſent to ſuch perſon that ſo ſhal make any contract of matrimonie, contrary to the forme and effect of this ſtatute: then the next of her kinne, to whom the inheritance ſhould returne or come after her deceaſe, ſhall from the time of ſuch aſſent, haue and enioy all ſuch lands, tenements, and hereditaments, as ſhe had in poſſeſſion, reuerſion, or remainder, at the time of ſuch aſſent, during the life of ſuch perſon that ſo ſhall contract matrimony: and after the deceaſe of ſuch perſon ſo contracting matrimony, then the ſaid lands ſhall diſcend, reuert, remaine, & come to ſuch perſon or perſons, as they ſhould haue done in caſe this Act had neuer bëne made, other than to him onely that ſo ſhall contract matrimonie. Sta. 4. & 5. P. & M. 8.

F

Orphans.

But this Act ſhal not extend to take away or diminiſh any liberty, cuſtome, or authority, concerning any orphans within the city of London, or any other City, Borough, or Towne, where Orphans are commonly vſed to be prouided for, either by grant, or by cuſtome: But the Lord Maior of the city of London, and the Aldermen of the ſame, and euery other head Officer of any other Citie &c. where ſuch Orphans be prouided for, ſhall and may haue and take like rule, order, keeping, and charge of ſuch Orphans, and of all their lands, tenements, goods, and cattels, as heretofore they vſed, or lawfully might haue had and vſed, if this Act had not bëne made. Sta. 4. & 5. P. & M. 8.

There

G

Co.li.3.37. There was grandmother a widow, mother a widow, and two daughters, the grandmother being seised of certaine land in fée holden in socage, did by her last will in writing bequeath the same to the said two daughters, and to the heires of their two bodies begotten, by euen portions equally to be diuided, the remainder to the mother, being her sole daughter and heire apparant, and her heires: and after the mother maried a second husband, and then the grandmother died, after whose death both the said daughters entred into the said lands so deuised vnto them: and then the yonger daughter being betweén the age of xiiij. and xvj. yéeres, and liuing in house with her father in law and mother, of her owne will and forwardnes, and with the consent and agreement of her father in law, departed forth of his house in a morning, and the same day in another place maried a husband: In this case it was adiudged, that the said yonger daughter had forfeited her moity or halfe part of the said lands so deuised vnto her, by her contracting of Matrimony, and that her said mother should take the benefit of the said forfeture, for the mother had the custody and gouernment of the said daughter at the time of the said contract, by the speciall words & prouision of the said statute, which gouernment was annexed to the person of the mother Iure naturæ, and was not transferred to her second husband by her mariage, as her lands and goods were, and so her husbands cõsent was not materiall, nor that consent which the meaning of the makers of that statute did respect and prouide for. And though the daughter was forth of her mothers house at the time of the contract of mariage, yet in the iudgement of law the mother had then the custody of her, which was inseperable from her person. And séeing the foresaid statute of 4. & 5. P. & M. doth giue the forfeiture to the next of the kin to whom the inheritance should discend or come after her decease, during the life of such person that so shall contract matrimonie, therefore the party must be of the blood, and next of the blood to whom the inheritance vpon such forfeiture shal discend or come, which is the mother, and not the eldest sister (for administration may be granted of the goods of the son, or of the daughter, dying intestat, to the father or mother, as to the next of the blood of the party deceased, according to the statute of anno 21. H. 8. 5.) And further, though the elder sister be of kin to the yõger, yet in this case if the yonger haue any issue, her land should discend to her issue; and if she haue no issue, it should remaine to her mother: for that the elder and yonger sisters were tenants in common in taile, though they neuer made partition indéede, the remainder thereof to their mother in fée, by force of the said deuise of their grandmother, who by her will meant and ordained, that the land should be diuided, and that one of them should not enioy the whole as surniuor to the other.

The daughters forfeiture for mariage without her mothers consent.

Sta. 4. & 5. P. & M. 8.

41 Hauing written of deceits and frauds practised or performed by some particular persons to others, as by the tenant to his Lord, the debtor to the creditor, the seller to the purchaser, the lessor to the lessée &c. I am now to expresse and discouer some other guiles, frauds, and falshods, which the offendors therein do indeuor to put in vse or practise, not only against any one, two, or more special persons (as in the cases aforesaid) but against euery person that shall put them in trust, or otherwise shall haue occasion to vse them, or theirs, which our statute laws haue accused, and condemned to be offences, and haue inflicted vpon the transgressors thereof seuerall punishments. As by the Statute of Anno 9. H. 5. falsifiers and counterfeiters of deceitfull and vntrue weights, being attainted thereof, shalbe taken by Iustices of peace, Shiriffes, Eschetors, and other Commissioners, and kept in prison without mainprise, vntill

Seuerall deceits prohibited by seuerall Statutes.

Counterfeiting of weights deceitfull.

Sta. 9. H. 5. 8

vntill they haue made fine and ranſome according to the Iuſtices diſcretion.

Deceit by diminiſhing of a veſſell.

By the Statute of Anno 23.H.8. If any diminiſh a barrell, a kilderkin, or firkin, to the deceit or hurt of another, by taking out the head or any ſtaffe, he ſhall forfeit three ſhillings foure pence, and be puniſhed by the diſcretion of the chiefe officer, before whom the offence ſhall be preſented, and the veſſell ſhalbe burned. St.23.H.8.4.

Deceitfull things vpon fuſtian.

By the Statute of Anno 11.H.7. If any denizen or forreiner ſhall vſe yrons or other deceitfull thing vpon fuſtians vnſhorne, to breake off the nap and cotton of the ſame, but only the broad ſheeres, he ſhall forfeit for every offence twenty ſhillings to the King and him that will ſue. St.11.H.7.27

Deceit in Goldſmiths worke.

By the Statute of Anno 18. Elizab. If any Goldſmith doe make any Goldſmiths worke, or plate, which ſhall be touched, marked, or allowed for good by the Wardens or Maſters of that Myſterie, and that in the ſame there ſhall be found any falſehode or deceit, then the ſaid Wardens and Corporation ſhall forfeit the value of the thing exchanged or ſold, to the King and the party grieued. Stat.18.El.14

Deceitfull dying of linnen cloth.

By the Statute of Anno 1.Eliz. If any do caſt, or cauſe to be caſt, any peece of linnen cloth ouer a peece of timber, and doth by any deuice, racke, draw, and ſtretch the ſame of length and breedth, and then doth beat it, and caſt deceitful liquors, mingled with chalke or other things, vpon it, or doth vſe any other deceitfull thing, whereby it ſhalbe the worſe for the vſe thereof, then he ſhall forfeit the ſame to the king, and him that will ſue for it, be one moneth impriſoned at the leaſt, and pay ſuch fine as ſhall be aſſeſſed by the Iuſtices before whom he is condemned. Stat.1.El.12.

Deceits in weights or beames for pewter or braſſe.

By the ſtatute of anno 19.H.7. If any perſon dling buying and ſelling of pewter or braſſe, do occupy any falſe or deceitful beams or weights, of the ſaid wares, he ſhall forfeit 12.s. to the king and the party that will ſue. And if he be not able to pay ſo much, he ſhal be put in the ſtocks vntill the next Market day, and then ſet on the Pillorie all the market time. Stat. 19.H.7.6 4.H 8.7.

Deceit in winding of wooll.

By the Statute of Anno 23.H.8. No perſon ſhall wind, or cauſe to be wound, any fleece of woll, not being ſufficiently waſhed, nor put in a fleece any clay, lead, ſtones, ſand, tailes, deceitfull lockes, cot, colles, cumber, lambes woll, nor any other thing wherby the fleece may be the more weightie, to the deceit and loſſe of the buyer, vpon pain to forfeit for every fleece ſix pence, to the king and finder and prouer of the ſame deceit. St.23.H.8.17

Deceit in packing of wooll.

By the Statute of Anno 8.H.6. If any woll-packer do make any other but good and due packing, he that feeleth himſelfe grieued thereby, ſhall haue his action of Treſpaſſe and deceit at the Common law againſt him. And if any ſtranger do force, clacke, or beard any woll, he ſhall forfeit the ſame, or the value thereof, and be impriſoned. St.8.H.6.22.

Deceit in dying of ware or hony.

By the Statute of Anno 23.Eliz. Euery perſon which in the making and melting of wax, or hony, ſhall vſe any deceit by mingling the ſame with roſin, tallow, turpentine, or any other deceitfull thing, to the intent to ſell, or offer the ſame to be ſold, ſhall forfeit the ſame mingled wax or hony. And if it be ſold before the corruption ſhalbe found, then he ſhall forfeit v.s. for euery pound to the king and the party deceiued, if he will ſue. Stat.23.El.8.

Deceit in vpholſters.

By the ſtatute of anñ 11.H.7. and anñ 5.Ed.6. If any perſon ſhall make to the intent to ſell, or offer to ſell, any featherbed, bouſter, or pillow, except the ſame be ſtuffed with drie pulled fethers, or clean downe only, without mingling of ſcalded fethers, fen-downe, thiſtle downe, ſands, lime, gravel, haire, or any other deceitfull or corrupt ſtuffe: or ſhal make to the intent to ſel, or offer to put to ſale, any quilt, mattrice, or cuſhions, which ſhalbe ſtuffed with any other thing than feathers, woll, or flocks alone, he ſhal forfeit the ſame ſo ſold, or offered to be ſold, to the King and him that will ſue. St.11.H.7.19 5.Ed.6.23.

Bringing in deceitfull hops.

By the ſtatute of Anno 1.Iac. If any forreiner, denizen, or Engliſhman, ſhall bring, or cauſe to be brought into this realme, out of any forren dominion beyond Stat.1.Iac.18.

yond the ſea, any deceitfull hops mired with powder, duſt, ſand, or other ſoile whatſoeuer, he ſhall forfeit the ſame hops. And if any Brewer of ale or beare, which ſhal buy the ſame brought from beyond the ſeas, or growing within this realme, ſhall ſpend the ſame about the brewing of ale or beare to be ſold, being corrupt or mixt with powder, duſt, or any ſoile whatſoeuer, he ſhall forfeit the ſame, or the value therof to the K. & him that will ſeiſe or ſue for the ſame. For the auoiding of great deceits committed in ſelling of ſundry ſorts of corrupt & mingled ſpices, drugs, wares, & other marchandizes garbleable, by a ſtat. made

St. 1. Iac. 19. Añ 1. Iac. it was ordained, That all ſpices, wares, drugs, & other marchandizes garbleable, ſhall for the fees vſually allowed in that behalfe, be ſufficiently garbled & diuided, & after ſealed by the garbler, his deputy or ſeruãt, before the ſame be ſold, & ſhal not after be mired with any garble, vpon pain of the forfeit of the ſame, or the value thereof, to the K. and him that will ſue for the ſame. And becauſe in ſeuerall ages there haue bẽn diuers & many deceits and frauds practiſed and put in vre in the ſpinning, carding, and dying of woll and woollen yarne, and in the making, weauing, fulling, watering, tucking, milling, rowing, dying, thicking, folding, preſſing, tacking, mingling, tentering, ſtraining, ſtretching, meaſuring, ſearching, marking, & ſealing, of woollen cloth, & in the length, breedth, & weight thereof, to the preiudice & hinderance of the buiers or wearers of the ſame: for the preuention and reſtraint whereof, by the ſtatutes made Añ 2. E. 3. 14. 3. R. 2. 2. 13. R. 2. 11. 4. H. 4. 6. 7. H. 4. 10. 13. H. 4. 4. 6. H. 8. 9. 25. H. 8. 18. 27. H. 8. 12. 3. Ed. 6. 2. 5. Ed. 6. 6. 4. & 5. P. & M. 5. 8. El. 12. 23 El. 9. 27. El. 18. 35. El. 10. 39. El. 20. 43. El. 10. 3. Iac. 16. it was ordained & enacted, how the woll prouided for the making of cloth to be ſold, ſhal be ſpun, carded, and dyed, and of what length, breedth, and weight ſeuerall ſorts of clothes wrought in ſeuerall counties, cities, townes, and parts of the realme made to be put to ſale, ſhall and ought to be, and how and in what manner and ſort the ſame ſeuerall clothes ſhall be made, wouen, fulled, watered, tucked, milled, rowed, died, thicked, folded, preſſed, tacked, mingled, tentered, ſtrained, ſtretched, meaſured, ſearched, marked, and ſealed, and ſeuerall penalties be inflicted vpon the tranſgreſſors therein, if any of the ſame be omitted, or otherwiſe vſed then they ought to be. Cuery of which to ſet downe particularly, or ſo much thereof as at this preſent are reputed in force, would require a large diſcourſe or whole Treatiſe by it ſelf. And the which I do the rather refraine to ſet down and expreſſe, becauſe it is doubtfull & diſputable, whether any branch or article in either of the foreſaid ſtatutes or any other ſtat. do repeale, diminiſh, or alter the force of any other former ſtat. or branch of ſtat. And therefore conſider of theſe ſeueral branches of repeale in the before mentioned ſtatutes of Añ 5. Ed. 6. 6. 8. El. 12. et 43. El. 10. Et quęre.

Deceit in ſpices & drugs.

Deceit in Woollen cloth

42 As the gouernors of this ſtate haue bẽne prouident from time to time to preuent and puniſh deceits and frauds, when they were practiſed towards mens lands, leaſes, annuities, rents, debts, or other goods, cattels, or rights, ſo haue they taken care, that mans health ſhalbe preſerued, & their bodies defended from feeding vpon deceitfull and corrupt victuall, and haue ordained laws to puniſh thoſe who in ſtead of good, deceiued men with bad, corrupt, & vnwholſome viãds: as it appeareth by the ſtat. made Añ 51. H. 3. et Añ 51. E. 1. wher-

St. 51. H. 3. 3. St. 51. Ed. 1. by it is ordained, That a butcher that ſelleth ſwines fleſh meaſled, or fleſh dead of the morion, after ỹ he ſhalbe conuict therof, for the firſt time ſhalbe grieuouſly amerced, the ſecond time he ſhalbe adiudged to the pillory, the third time he ſhalbe impriſoned, & make fine, & the fourth time he ſhall forſweare the towne.

Deceit by ſelling of vnholeſome victuals.

And in this manner ſhall it be done of all that offend in like caſe, as of cookes that ſéeth fleſh or fiſh any waies that is not holeſome for mans body, or after that they haue kept it ſo long that it loſeth the naturall holeſomeneſſe, then ſéeth it againe, and ſell it. And in like ſort, by one other ſtat. made Añ 39. El. it was enacted, That if any alien or ſtranger borne, or any denizen or naturall borne ſubiect, of this realme ſhal bring into any hauen, port, créeke, or towne of this realme any ſalt fiſh or ſalt herrings which ſhall not bée good, ſwéet, ſeaſonable, & meet for mans meat, and ſhal offer the ſame to be ſold, and ſhalbe warned by any officer of ſuch Port &c. where the ſame ſhalbe offered to be ſold, that the ſame be not ſeaſonable, nor méet for mans meat: Then if he or they ſhal after that offer any of the ſaid vnſeaſonable fiſh to be ſold to any perſon within this Realme: or being an alien borne, and no denizen, ſhall not depart with the ſame from the ſaid Hauen, Port, or Towne ſo ſone as conueniencie will ſerue: Then all and euery perſon, owners thereof, ſhall forfeit to the Quéene all the ſaid vnſeaſonable fiſh, vnmeet for mans meat, as is aforeſaid. And by a ſtatute made Añ 4. Ed. 3. it was eſtabliſhed, That aſſay ſhal be made of wines twice euery yeare, once at Eaſter, and another time at Michaelmas, and more oft if néed be, by the Lords of the Townes, and thier Bailifes, and alſo by the Mayors & Bayliſes of the ſame townes: and all wines that be found corrupt ſhall be powred out, and the veſſels broken.

39. El. 10.

4. E. 3. 12.

Extor-

Extortion, Exaction

Extortion is a wrong done by an Officer, as Ordinarie, Archdeacon, Officiall, Pator, Bailife, Shirife, Eſtreator, Coroner, Vndershirife, Auditor, Receiuer, Clerke, or other Officer, or by any other by colour of an office, in taking of an exceſſiue reward or fee, and more then the law doth allow him, for execution of his laide office: which offence in ſome degree is worſe then the priuy picking of a mans purſe in ſecret, and the tranſgreſſor in a ſort may be compared to the Freebooter, which with drawne ſword and with menacing words aſſaulteth the trauailer by the way, who taketh downe his purſe to him for feare of further hurt: And ſo it is the poore ſutor many times inforced to do to the Officer, when of neceſſitie he muſt vſe his helpe. It is a thing moſt odious and offenſiue to the iuſtice and peace of the Realme, and to all the members thereof, that thoſe men who bee ſpecially made choiſe of, and principally ſelected to ſerue their prince and country, and to further the execution of iuſtice in their offices and places, and be ſufficiently rewarded with conuenient ſtipends for their paines therein, ſhould in contempt of the law aſſeſſe their owne fees, in a ſort put their hands in other mens purſes, and there take what they will, and thereby do wrong, vnder the colour and ſhadow of iuſtice. What is Extortion.

Exaction is a wrong done by an officer, or by one pretending to haue authoritie, in demaunding and taking reward or fee for that matter, cauſe, or thing, which the law doth allow no fee at all. And as our common and ſtatute lawes haue declared, which offences or acts they doe condemne and adiudge as Extortions and Exactions, ſo haue they preſcribed in moſt caſes ſeuerall penalties to be inflicted vpon the ſeuerall tranſgreſſors therein, leauing the reſidue to be puniſhed at the kings pleaſure, or by the diſcretion of ſuch of his Iudges, Iuſtices or others by his commiſſion authorized, before whom the offendors ſhall be thereof conuicted. And further our ſaid ſtatute lawes haue ſet downe for the moſt part, what fees or duties the ſutor ought to pay to the officer, & the officer is to demaund of him; to the intent that the one ſhall not be ignorant what to offer, nor the other what to require; and to the end, that the Law hauing written it in a ſort in the officers forehead what his duty is, he may bluſh when he loketh in the ſutors face, and demaundeth more. What is Exaction.

2 I will begin with an Exaction, that no former generation did taſt of,

heare of, or feare, but it hath ſprung vp of later yeares, & bin greatly exclaimed of, and condemned in this our preſent age (which is taking of money, or ſome other reward for a Report or Certificat) wherein the offender moſt commonly doth a double iniury, and to two ſeuerall perſons, viz. firſt to him whoſe mony, fee, or other reward he taketh for the fauourable making of that report in his behalfe, whereas the law doth allow him none for reporting, but otherwiſe bountifully rewardeth him for that and all ſuch other paines, and next and chiefely to him, in preiudice of whom or whoſe caſe he maketh that report. He doth not now indifferently reſpect the cauſe in queſtion, but bendeth his eye vpon the reward which hee hath receiued, & deuiſeth to accompliſh the requeſt of the one, and yet to yeeld to the other not the effect, but ſome colour of iuſtice. The King at his coronation doth promiſe to all his ſubiects, Quod nulli vendemus, nulli negabimus, aut deferemus iuſticiam: wherevpon the whole realme did take it vnkindly at their hands, who being the Kings Subſtitutes in place of iuſtice, and receiuing but a ſmall particle of his authoritie, would doe them all the ſayd offences at once, and ſell, denie, and deferre iuſtice to ſome of the Kings ſubiects, & certifie that for good which was bad, or that for iuſtice which was mere iniurie: Or if they did make report and certificat of that which was iuſt and true, would ſell it, and take money or other reward for it, which the King himſelfe vpon his oath refuſeth to do. And therefore, becauſe all exactions, extortions, and corruptions be odious as well in this, as in all other well gouerned Common-weales, and to the intent to preuent the like enormities in this and other ages, by a ſtatute made Anno 1. Iacob. it was enacted, That no perſon to whom any order or cauſe ſhalbe committed, or referred, by any of the Kings Iudges, or Courts at Weſtminſter, or any other Court, directly or indirectly, or by any act, ſhift, colour, or deuiſe, haue, take, or receiue any money, fee, reward, couenant, obligation, promiſe, agreement, or any other thing, for his report or certificat, by writing, or otherwiſe, vpon paine of forfeiture of one hundred pounds for euery ſuch report or certificat, and to be depriued of his office and place in the ſame Court: The one moitie to bee to the King, his heires &c. the other moitie to the party grieued, which will ſue for the ſame at any time during the ſaid ſuit, or within one yeare after the ſame cauſe diſcontinued or decreed: and in his default of ſuch ſuit, to him or them that will ſue for the ſame by originall writ, B. P. or I. in the Kings Court of Starre-chamber, or in any of his Courts of Record at Weſtminſter: in which ſuit by B. P. or I. no W. E. P. S. P. or any other delay ſhall be admitted. Prouided neuertheleſſe, That it ſhalbe lawfull for the Clerke to take for his paines for writing of euery ſuch report or certificat twelue pence for the firſt ſide, and two pence for euery ſide after, and no more, vpon paine to forfeit tenne ſhillings for euery penny taken, ouer and aboue the ſaid ſummes to be had and recouered as aforeſaid.

Magna Char. 9. H. 3. 29.

St. 1. Iac. 20.

Exaction by taking of reward for a report.

The Clerkes duty.

3. For that the Kings of this Realme haue allowed to their Officers from time to time ſufficient Salaries to maintaine them, according to their eſtates and degrees, to the intent that they ſhould not otherwiſe extort any thing from their ſubiects, but ſuch fees & duties, as the ancient cuſtomes, lawes, or ſtatutes of the realme did allow them: Therefore by the ſtatute of Weſt. 1. it was ordained, That if any ſhirife, coroner, or other officer of the kings do take any thing to execute his office, but only that which the king alloweth him, he ſhal render double to the party, and ſhalbe puniſhed at the kings pleaſure.

Extortion in the ſhirife, coroner, & other officers.

St. 3. E. 1. 26.

St.3.E.1.29. 4 To preuent extortion in certaine Officers of the Iudges, by the same statut of West.1. it was enacted, That if the Serieant, Crier, or Marshall of any Iustice, do wrongfully take mony of any which doth recouer land, obtaine his suit, leuie a fine, or prosecute any suit touching any plea of the Crowne, he shal be punished at the Kings pleasure, and yeld treble damages to the party grieued. And if he bee a Serieant of fee, his Office shalbe seised into the K. hands. 19.Ass.p.13. But in an attaint, if the plaintife be nonsuit, euery of the petit Iurie shall pay xy.s. to the Marshall, and be discharged.

Extortion in a Serieant. Crier, or Marshall, of a Iudge.

St.1.E.1.10. St.1.H.8.7. 5 To eschew extortion which in some cases before had bin committed by some Coroners, first by the stat. of anno 3.E.1. and after that by the stat. of anno 1. H.8. it was established, That a Coroner vpon request made to him to come, and inquire vpon the view of any person slaine, drowned, or otherwise dead by misaduenture, the same Coroner shall doe his office diligently, vpon the view of the bodie of euerie such person or persons, without taking any thing therefore, vpon paine to euery Coroner that wil not indeuor himselfe to doe his Office, as is aforesayd: or that hee taketh any thing for doing of his Office vpon euery person dead by misaduenture, for euery time fortie shillings. 27.Ass.p.14. And vpon the said statute of Anno 3.Ed.1. two Coroners were indicted of Extortion, for that they had taken of some of the K. people, halfe a mark at seuerall times, contrarie to the foresaid stat. and their othes, and therefore they paid a fine to the King.

Extortion in a Coroner.

6 Because the Shirife of euerie County is a great and necessarie Officer in the Common-weale, and vsed as a speciall instrument to the furtherance of iustice, in all suits pursued at the common law, and his seruice is imployed in the beginning, prosecuting, and ending of the most of them: therefore as the law hath alwayes had a speciall regard of him, and foreseene that he shall be a man of wisedome, of worth, of credit, countenance, and ability, and that he shalbe allowed a conuenient stipend, and salary for his paines in most cases: so hath she carrie a vigilant and watchfull eye vpon him, and his inferiour Officers, or Substitutes, knowing what grieuous oppressions might ensue, if she should leaue a man of his authoritie, and necessarie imployment, at libertie to diue at his pleasure into other mens purses, and to take what hee would; and therefore shee hath restrained him, his Undershirife, Bailife of Franchise, and other Bailife within certaine lists, and assigned them what they shall take for Arrests, Attachements, Mainprises, letting to Baile, and serving of Executions, which if any of them do exceed, he shall forfeit the penalties hereafter expressed, and be adiudged an extortioner: As appeareth by St.23.H.6.10. the stat. of Ann 3.H.6. whereby it was ordained, That no Shirife, Undershirife, Bailife of Franchise, nor any other Bailife, by occasion, or vnder colour of his Office, shall take any other thing, by themselues, or by any other person to their vse, or to their profit, of any person by any of them arrested, or attached, nor of any other for them, for the omitting of any arrest, or attachement to bee made by their bodies, or of any person by any of them by force or colour of their office arrested or attached, for fine, fee, mainprise, letting to bayle, or for shewing any ease or fauour to any such person so arrested, for their reward or profit, but such as followeth, viz. The Shirife xx.d. the Baylife which maketh the arrest or attachement iij.s. the Gaoler (if the prisoner be committed to his ward) iij.s. iij.d. The Shirife, Undershirife, Shirifes Clerke, Steward, or Bailife of Franchise, seruant to the Bailife, or Coroner, shall not take by colour of his office,

Extortion in Shirifes, Undershirifs, Bailifes.

The fees of the Shirife for arrests, &c.

The Shirifs duetie for the making of a copie of a Panell.

office, by himselfe, nor by any other person to his vse, any thing of any person, for making of any returne or panel, and for the copie of a panell iiij. d. No Shirife, nor none of the officers aforesaid, shall take, or cause to be taken or made any obligation by colour of their office, but onely to themselues, of any person, nor by any person which shall be in their ward by course of the law, but in the name of their office, and vpon condition written, that the said prisoners shall appeare at the day of the said writs, bils, or warrants, and in such places as the said writs, bils, or warrants shall require. And if any of the said Shirifes, or other officers aforesaid, take any Obligation in any other forme, by colour of their offices, it shalbe void. And he shall take no more for making of any such obligation, warrant, or precept by him to be made, but iij. d. And all Shirifes, Vndershirifes, Clerks, Bailifes, Gaolers, Corroners, Stewards Bailifes, of Franchises, or any other Officers or Ministers, which doe contrarie to the foresaid ordinances, in any point of the same, shall lose to the partie in this behalfe endammaged or grieued, his treble dammages, and shal forfeit xl. l. at euery time that any do the contrarie in any point of the same, whereof the king shall haue the one halfe, to be imployed onely to the vse of his house, & the party that will sue, the other. But the Warden of the Fleet, and of the K. palace at West. shall not be preiudiced by this ordinance, in his dutie of his office.

The Shirifs, &c. forfeiture for extortion.

The warden of the Fleet.

Extortion in a Sherife for sparing of a Juror.

7 To the intent that the Shirife nor any of his officers should take any reward, for the sparing to returne any Juror, and by that meanes commit extortion, by a stat. made anno 27. El. it was prouided, That if any Shirife, Vndershirife, Shirifes deputie, Shirife or Vndershirifes Clerke, or any Bailife of Franchise, shall receiue, haue, or take, by himselfe, or any other, any summe of money, reward, or other profit, directly or indirectly, or do take any promise, make any agreement, or assent to haue any summe of money, reward, or other profit, directly or indirectly, of any person or persons, for the sparing, not warning, or not returning of any person to be sworne as a Juror, for the tryal of any issue ioyned in any of the courts of the K. Bench, Common Pleas, & Exchequer, or before any Iustice: then euery Shirife &c so offending, shal forfeit for euery such offence v. l. to the K. and I. to be recouered in any Court of Record by A. B. P. I. &c. wherein no W. E. P. &c. St. 27. El. c.

How much Shirifes may take for seruing of an execution.

8 And for that our later age thought it as expedient to preuent extortion or oppression in Sherifes and other their Officers in seruing of executions, as the former age did in making of arrests or attachements, &c. and to the intent that the Sherife and his Officers might know what to demaund and take for the seruing of an execution, without danger of extortion, and that the suitor might be ascertained what to offer and pay therefore, without any scruple of receiuing iniurie, by a Statute made An. 29. Eliz. or rather Añ 28. Eliz. it was enacted, That it shal not be lawful, to or for any Shirife, Vndershirife, Bailife of Franchises, or liberties, nor for any of their, or either of their officers, ministers, seruants, Baliffes or Deputies, nor for any of them, by reason or colour of their or either of their offices, to haue, receiue, or take of any person or persons whatsoeuer, directly or indirectly, for the seruing and executing of any extent or execution vpon the body, lands, goods or chattels of any person or persons whatsoeuer, more or other consideration or recompence, than in this Act is and shalbe limited, which shall be lawfull to be had, receiued, and taken, viz. twelue pence of and for euery 20. shillings, where the summe exceedeth not an hundred pounds, and fiue pence of and for euery 20. shillings, St. 29. El. 4. St. 28. El. 4.

being

being ouer and aboue the ſaid ſum of an hundꝛed pounds, that he oꝛ they ſhall ſo leuy, oꝛ extend and deliuer in execution, oꝛ take the body in execution foꝛ, by vertue and foꝛce of any ſuch extent oꝛ execution whatſoeuer, vpon paine & penaltie, that all and euery Shiriſe, Vndershiriſe, Baylife of Franchiſes &c. which at any time ſhall directly oꝛ indirectly doe the contrary, ſhall loſe to the party grieued his treble dammages, & ſhall foꝛf. xl. ℔. of lawful Engliſh money foꝛ euery time that he, they, oꝛ any of them ſhall do the contrary to the M. & J. to be recouered by A. S. B. oꝛ J. wherein no W. E. P. Pꝛouided alwaies, that this act ſhall not extend to any fées to be taken oꝛ had foꝛ any execution within any citie oꝛ towne coꝛpoꝛat. Execution within cities oꝛ townes coꝛpoꝛat.

5 E. 2, H. 4. 8. 9 By the ſtat. of Añ 2. H. 4. it was eſtabliſhed, That the Chirographer of the common place, noꝛ his fermoꝛ, deputy, oꝛ lieutenant, ſhall not take any moꝛe then iiij. s. foꝛ any fine leuied in the ſame court. And if the fermoꝛ, deputy, oꝛ lieutenant do take any moꝛe, he ſhall foꝛf. his office, be excluded the ſame court, ſuffer one yéeres impꝛiſonment, & pay to the party grieued his treble damages: and the party grieued ſhall haue his ſuit befoꝛe the ſame Juſtices. Extoꝛtion in the chirographer of the common place

8. 33 H. 8. 39 10 By the ſtat. of Añ 33. H. 8. it was enacted, That if any auditoꝛ of the Exchequer, Duchy of Lancaſter, & court of Wards and Liueries, oꝛ any of his clerkes, oꝛ any other, to their oꝛ any of their vſe, ſhall take foꝛ the inrolment of any letters patents, decrées of the ſame courts, grants, oꝛ indentures of leaſes, oꝛ foꝛ the allowance of the ſame, aboue 3. s. 4. d. he ſo offeding ſhal foꝛf. 6. s. 8. d. foꝛ euery peny that he taketh aboue the foꝛeſaid ſumme, to the K. & J. &c. to bee recouered by A. J. wherein no W. E. P. &c. And if any perſon doe offer to any ſuch auditoꝛ any ſuch letters patents, decrées, oꝛ leaſes, to be inrolled, he ſhall inroll the ſame, oꝛ as much thereof as ſhall appertaine to his office. Extoꝛtion in auditoꝛs, oꝛ their clerkes.

8. 33 H. 8. 39 11 By the ſame ſtat. of Añ 33. H. 8. it was moꝛeouer oꝛdained, That euery receiuer of the Exchequer, Duchy of Lancaſter, & court of Wards & Liueries, which ſhall pay to any perſon an annuity, pention, oꝛ other rent, ſhall (if the ſame perſon will vpon the receit thereof deliuer vnto him a ſufficient acquittance, ſealed & ſigned, teſtifying the ſame receit) receiue the ſame, without taking any reward therefoꝛe, vpon paine to foꝛf. foꝛ euery penny oꝛ penny woꝛth receiued, 6. s. 8. d. And if the party do not deliuer ſuch a ſufficient acquittance, but that the receiuer oꝛ his clerke doth make the ſame, he ſhall haue therefoꝛe 4. d. and if he take aboue 4. d. he ſhall foꝛf. foꝛ euery penny oꝛ penny woꝛth ſo taken, 6. s. 8. d. And if any Treaſurer, Receiuer, oꝛ Miniſter accomptant, oꝛ their deputies, which ſhall pay to any perſon any fée, annuity, pention, dutie, warrant, oꝛ rent, do retaine, receiue, oꝛ take of the party to whom he ſhal pay the ſame, in way of reward, oꝛ otherwiſe, aboue 4. d. foꝛ euery ℔. that he ſhal pay, he ſhal foꝛf. 6. s. 8. d. foꝛ euery penny oꝛ penny woꝛth that he ſhall receiue ouer, to the party grieued, to be recouered by A. B. oꝛ P. wherein no W. E. oꝛ P. &c. Extoꝛtion in the Kings receiuers. Extoꝛtion in them who doe pay fées, pentions, &c.

8. 26. H. 8. 3 12 By the ſtat. of Añ 26. H. 8. it was oꝛdained, That if any Officer of the Exchequer do take of any Archbiſhop, Biſhop, oꝛ other perſon hauing charge with the collection and payment of the Tenth of Spirituall pꝛomotions, any reward foꝛ making his account oꝛ Quietus eſt in the ſame Exchequer, oꝛ foꝛ any thing concerning the Tenth, he ſhall foꝛfeit his office, and make fine at the Kings pleaſure. Extoꝛtion in officers of the Exchequer.

Extoꝛtion in a clerke of the ſignet oꝛ priuy ſeale.

13 By the ſtatute of Anno 27. H. 8. it was eſtabliſhed, That all and euery Clerke, and Clerkes of the Signet, and priuie Seale, ſhall haue and take foꝛ his oꝛ their writing of a warrant vpon a Bill foꝛ Males of reward, twelue pence: foꝛ the writing of a warrant foꝛ the gift of euery office, twenty pence: foꝛ the writing of a warrant foꝛ a pention, annuitie, oꝛ wages, twenty pence: foꝛ the writing of a warrant foꝛ a ſpeciall Liuery, oꝛ other perpetuitie, fiue ſhillings eight pence: foꝛ the writing of a warrant vpon euery bill foꝛ a Conge deſlier, royall aſſent, reſtitution of Temporalties, Donatiues, Annotations, Preſentations, oꝛ other Eccleſiaſticall matter, three ſhillings foure pence: foꝛ the writing of euery warrant vpon a Placard, Licence, Pardon, oꝛ Shirifes reward, two ſhillings: foꝛ the writing of euery warrant vpon a denizen, three ſhillings foure pence: foꝛ the writing of a warrant foꝛ the keeping of an Ideot, twenty pence: foꝛ the writing of a warrant foꝛ the keeping of a Ward, three ſhillings foure pence. And no Clerke of Clerkes of the Signet oꝛ priuy Seale aforeſaid, ſhall take foꝛ the writing of any manner warrant aboue ſpecified, moꝛe large and ample fées then is beforе preſcribed, vpon paine of ten pounds to be foꝛfeited to the K. & J. to be recouered by B. A. P. J. in any of the Kings Courts, wherein no E. P. W. ſhalbe admitted. St. 27. H. 8. 11

Extoꝛtion by officers of the faculties.

14 To the intent that the Clerke of the Faculties, & his inferioꝛ officers & clerkes might content themſelues with their fées & duties aſſigned, & extoꝛt no moꝛe, by the ſtat. of Añ 25. H. 8. it was enacted, That ſuch as ſhall exact oꝛ receiue of any ſuitoꝛ moꝛe foꝛ a diſpenſation, faculty, oꝛ licence, then is contained in ỳ two bookes of one tenoꝛ of Taxes, ſhal foꝛfeit ten times ſo much as he ſhal ſo extoꝛtiouſly receiue & exact, to the K. his heires & ſucceſſoꝛs, & the party that will ſue, to be recouered by A. B. P. wherein no E. W. P. ſhal be admitted. St. 25. H. 8. 21

Extoꝛtion vpon pꝛentices & freemen.

15 Becauſe no Extoꝛtion ſhould be committed vpon apꝛentices when they begin oꝛ end their termes, by the ſtat. of Añ 2. H. 8. & Anno 28. H. 8. it was eſtabliſhed, That no Maſters, Wardens, oꝛ Fellowſhips of crafts, noꝛ any of them, ſhall take of any apꝛentice, oꝛ other perſon, foꝛ the entry of the ſaid pꝛentice into their ſaid Fellowſhip, aboue the ſum of ij. s. vj. d. noꝛ foꝛ his entry when his yeares oꝛ terme is expired, aboue iij. s. iiij. d. vpon pain to foꝛf. foꝛ euery time that they oꝛ any of them ſhall offend contrary to this act, vi. l. to the K. and the J. &c. to be recouered by A. J. &c. wherein no P. E. &c. St. 22. H. 8. 8. St. 23 H. 8. 5.

The fées of the officers of the court of wards.

16 Becauſe the makers of our lawes were willing to giue foꝛewarning to the officers of the Court of Wards to eſchew extoꝛtion, therefoꝛe by the ſtat. of Añ 32. H. 8. it was enacted, That the maſter & officers of the Court of wards & liueries ſhall take foꝛ the fées of all pꝛoces at the ſuit of the parties, vnder the pꝛiuy ſeale of the ſame court, v. s. vj. d. and foꝛ the fées of all commiſſions directed out at the ſuit of the parties ij. s. vj. d. and foꝛ recoꝛding of all appatances iiij. d and no moꝛe. St. 32. H. 8. 46

The fées foꝛ obligations foꝛ firſt fruits.

17 By the ſtatute of Anno 26. H. 8. it was pꝛouided to auoide Extoꝛtion in the officers of the firſt fruits, That no perſon ſhall compell an other to pay foꝛ any writing obligatoꝛie to be made foꝛ the paiement of the firſt fruits of Eccleſiaſticall liuings to the King, aboue eight pence, noꝛ foꝛ any acquitance foꝛ the receit thereof, aboue foure pence. St. 26. H. 8. 3.

Extoꝛtion by Eſcheatoꝛs.

18 Foꝛ that Eſcheatoꝛs ſhould know what is their duetie foꝛ the finding

of

of offices, and for the execution of Writs, to the intent that they might thereby the eaſlyer ſhunne the danger of Extortion, if they will: by a ſtatute made
St.33.H.8.22 Anno 33. H. 8. it was enacted, That if any Eſcheator doth take above the ſumme of xb. ſhillings for the finding of an office of any lands, tenements, or hereditaments, not exceeding the cleare yearely value of fiue pounde, viz. for the Eſcheator xx. ſ. viz. ſ. for the writing of the office iij. ſ. iiij. d: for the charges of the Iurie iij. ſ. and for the officers that ſhall receiue the ſayd office in any court of Record iij. ſ. hee ſhall forfeit for euery time ſo offending, x.l. to the King and J. to be recouered by A. J. wherein no W. E. P. &c. And by
St.23.H.6.17 the ſtatute of Anno 23. H. 6. it was ordained, That if an Eſcheator do take priuily, or openly, by himſelfe, or any other, aboue the ſumme of xl. ſ. for the execution of any Writ in one countie, hee ſhall forfeit for euery offence forty pounds, whereof one halfe ſhall be to the K. and the other to him that will ſue.

19 To preuent Exactions by the officers of the Admiralty, vpon thoſe who
St.13.Ed.4.6. tranſaile into other Countries, for the getting of fiſh, by a ſtatute made Anno 2. Ed. 6. it was ordained, That if the Admirall, or any officer, or miniſter of the Admiraltie ſhall exact, receiue, or take by himſelfe, his ſeruant, or deputie, of any merchant, or fiſherman, any ſumme of money, doles or ſhares of fiſh, or any other reward, or benefite, for any licence to paſſe this Realme into Iſland, New-found-land, Ireland, or other places commodious for the getting of fiſh, or for any other reſpect concerning the ſaid voiages: hee ſhall forfeit for the firſt offence treble the ſumme, or valew of the reward ſo taken, to the King and him that will ſue for the ſame, to bee recouered by A. J. &c. wherein no W. E. P. &c. And for the ſecond offence, ſhall loſe his office, and make fine at the Kings pleaſure.

Exactions vpon them who tranaile for fiſh.

20 To the intent that the Marſhall of the Marſhalſey of the Court of the Kings houſe may take ſuch fees in open Court as were wont to be taken in the time of K. Edward the third, and none other, and may thereby omit to commit Extortion: by a Stat. made Ann 2. H. 4. it was declared, That the ſaid Marſhal may take the fees hereafter following, viz. of euery perſon which commeth by Capias to the ſayd Court iij. d. and if hee bee let to mainprize vntill his day vj. d. more. And of euerie perſon being defendant which is impleaded of Treſpas, and findeth two Mainpernors to keepe his day vntill the end of the plea vj. d. And of euery perſon committed to priſon by iudgement of the Steward, in whatſoeuer maner the ſame be, iiſ. d. and of euery perſon delinered of felony iiij. d. and of euery felon let to mainprize by the Court, iiij. d. But if the Marſhall, or any of his officers vnder him, doe take any other fees, than are before declared, the ſayd Marſhall and euery of his officers, ſhall loſe their offices, and alſo pay to the party greeued treble dammages, for the which the ſaid party ſhal haue his ſute before the Steward of the ſaid Court for the time being. A ſeruitor of bills, which beareth a ſtaffe of the Court, ſhall take for euery mile from the ſaid Court vntill the ſame place, where he ſhall do his ſeruice, j. d. and for xx. miles xij. d. e to ſerue a Venire facias, or a Diſtringas out of the ſame court the double. And if any Seruitor of Bills do the contrary, he ſhal be impriſoned, & make fine to the K. after the diſcretion of the Steward of the ſame court, and alſo be forejudged and baniſhed the ſame court. All which articles the Steward at his comming into the country hath authority to proclaim, and put in execution.

The fees of the Marſhall of the K. houſe

A Seruitor of bills in the Marſhals Court.

21 And for that the Kings of this realme haue from time to time bestowed vpon such as they assigned to be muster masters, or captaines in times of warre liberall and bountifull stipends, and allowances, the rather to the intent they should not exact, or make a pray, of such as should be, or then were souldiors. Therefore to preuent such like exaction, by a statute made Ann 4. et 5. P. et M. it was ordained, That if any person which shall be commanded by the K. her heirs or successors, by commission, letters, or otherwise authorized, to leuy, muster, or to make men to serue in her warres, or otherwise for the defence of this Realme, do by any meane exact, leuie, receiue, or take, or cause to be taken any mony, or other reward, or thing whatsoeuer, of any person for seruice in warre, or that shalbe appointed, hanted, or mustred, to serue in any such seruice, or for the sparing, or discharging of such person from the sayd seruice, then he shall forfeit ten times so much, as he shall receiue, exact, or take, to the K. & J. to be recouered by A. J. &c. wherein no W. E. P. If any captaine, petit captaine, or other hauing charge of men, shall for any aduantage or gaine by him to be received, discharge, or licence any of the men, or souldiors appointed to serue in the warres vnder his rule, or order, to depart from the said seruice: or shall not pay vnto his souldiors, & to euery of them their full & whole wages, conduct, & coat mony, within x. daies next after he shall haue receiued the same: then the party offending in giuing such licence, or discharge, shall forfeit for euery such offence x. times the value of the thing so receiued, to the K. & J. to be recouered by A. J. wherein no W. E. P. &c. And also he shal pay vnto euery such souldier from whom he shall with-hold any such wages, conduct, or coat money, treble the summe so with-holden.

Muster masters exacting mony to spare souldiors.

St. 4. & 5. P. & M. 3.

Exacting by captaines of their souldiors

22 Because Scauage, otherwise called Shewage was many times wrongfully, and extortionly taken by Magistrates of cities and corporat townes, of merchants that transported or brought their marchandizes thither: therefore by a statute made Anno 19. H. 7. it was prouided, That if any maior, shirife, bailife, or other officer, in any city, borough, or towne within this realme, doe distraine, take, or leuie any custome called Scauage or Shewage of any merchant denizen, or of any other the K. subiects denizens, for any merchandize to the K. before truly customed, that is brought by land or water to be vttered in any citie, borough, or towne in this land: or if any maior, shirife, bailife, or other officer in any city, borough, or towne for non paiment of the said scauage, let or disturbe any merchants, or any other persons denizens, to sell and vtter their merchandize by them brought into any citie, borough, or towne; then he which offendeth shal forfeit for euery offence xx. l. to the K. & the party grieued, or any other that will first sue by A. of debt in any shire, wherein no W. E. P. shalbe allowed. But the maior, shiriues, & communalty of London and euery of them shall haue such summes of mony for scauage of euery person denizen, as of right they ought to haue.

Extortion by taking of scauage of merchants.

St. 19. H. 7. 8.

23 Euery of the chiefe Iustices of the Kings Bench and Common Pleas, and the maior of the Staple at Westminster, and the Recorder of the Citie of London, before whom any obligation being of the nature and force of a statute Staple shall be recognized, according to the statute of Ann 23. H. 8. shall take for euery such Recognizance iij. s. iiij. d. & the clarke that shall write, make and inroll the same iij. s. iiij. d. and for the certificat of euery one such obligation xx. d. And if any of the said Iustices, Maior, Recorder, or Clarke take of any

The Iustices & Clarks fee vpon euery Recognisance

St. 23. H. 8. 6.

ny of the Kings ſubiects aboue the ſumme or ſummes to them limited by this ſtat. then the ſame offendor ſhall forfeit for euery time ſo offending, vl. l. to the K. and I. to be recouered by A. I. wherein no W. E. P. &c. And by the Stat.
St. 27. Eliz. 4. of Añ 27. Eli. it was further ordained, That no Clarke of the ſame Recogniſances ſhall or may take, for, or in reſpect of any ſearch to be made for, or concerning any ſtatute Perchant, or of the Staple, brought vnto him to bee entred, aboue vj. d. for one yeers ſearch, and ſo after the rate of v. d. for euery yeere, & not aboue, vpon pain to forfeit & loose to the party or parties grieued twenty times as much as he ſhall take, contrary to the true meaning of this Act: to be recouered in any of the K. courts of Record, by action of debt, B. P. I. wherein no W. E. P.

The Clarkes fee for ſearch.

24 Becauſe it is well perceiued, that learned and expert Atturneies be neceſſarie members in our State, and great meanes to further iuſtice, and to bring ſutes to their expected ends, and that they muſt therefore diſburſe money for learned counſell, for proceſſe, for pleading, for copies, and many other things, and after receiue the ſame againe, with their owne fees, and ſalarie for their paines of their Clients: Therefore the Law (as a prouident miſtris) taking care that Atturneies and Sollicitors, ſhal not in any ſecret maner commit extortion, by charging their Clients with exceſſiue fees, & vnneceſſary demaunds, by a ſtatute made Añ 3. Iac. procured it to be eſtabliſhed, That no Atturney, Sollicitor, or ſeruant to any, ſhalbe allowed from his Client, or maſter, of, or for any fee giuen to any Serieant, or Councellor, at law, or of or for any ſum or ſums of mony, giuen for copies to any clarke or clarkes, or officers in any court of Record at Weſtñ, vnles hee haue a ticket ſubſcribed with the hand & name of the ſame Serieant, or Councellor, clarke, clarks, or officers aforeſaid, teſtifying how much he hath receiued for his fee, or giuen or paid for copies, and at what time & how often. And all Atturneies and Sollicitors ſhal giue a true Bill vnto their maſters, or clients, or their aſſignees, of all other charges, concerning the ſuits which they haue for them, ſubſcribed with his owne hand, & name, before ſuch time, as they or any of them ſhall charge their clients with any the ſame fees or charges: And if the atturney or ſollicitor doe or ſhall willingly delay his clients ſuits, to worke his owne gaine, or demand by his bil any other ſums of mony, or allowance vpon his accompt of any mony which he hath not laid out or diſburſed: then in euery ſuch caſe the partie grieued ſhall haue his action againſt ſuch atturney, or ſollicitor, and recouer therein coſts and treble damages: And the ſaid atturney and ſollicitor ſhall be diſcharged from thencefoorth from being an atturney or ſollicitor any more.

St. 3. Iac. 7.

Meanes for Atturneies to auoide the ſuſpition of extortion.

An Atturney delaying of a ſuite, or demanding more then is due.

25 For that the Stewards of Leets and court Barons, did of late yeares get into their owne hands, and in their owne names, or into the hands of ſome of their friends to their vſe, the profits and perquiſites of the ſaid Leets, and court Barons, whereby many ſutors to the ſame Courts were iniuſtly vexed, and by grieuous fines and amerciaments, vnduely puniſhed, and much extortion was done vnto the Tenants and Inhabitants where ſuch Stewards were, to make and obtaine an vndue & extraordinary gaine to themſelues: for the reſtraining whereof, by a ſtatute made Anno 1. Iac. it was eſtabliſhed, That no Steward, deputie Steward, or vnder Stewarde of any court Leete, or court Baron, ſhall directly, or indirectly in his owne name, or in the name of any other, take, receiue, or make benefite to his owne vſe, in money, goods, or any other thing to the valew of twelue pence, or more, by vertus

St. 1. Iac. 5.

A prevention of extortion in Stewards of Courts.

vertue or colour of any demise or graunt, hereafter to be made, of any of the profits, or perquisites, or amerciaments of any such Courts, whereof they are Steward, which rightfully shall belong to the Lords of the same: vpon paine that euery Steward offending contrary to the Tenor of this Act, shall for euery such offence forfeit ten pounds, and to be disabled euer after to be Steward of such Court, or of any other: The one moitie of which forfeiture shall bee to the K. &c. and the other to any partie that will sue, to be recouered in any of the Kings Courts of Record, by A. B. P. I. &c. wherin no E. P. or other dilatorie plea shall be allowed.

Extortion in Gaugers, Searchers, and Packers of fish.

26 To the intent that Gaugers, and Searchers of barrells of fish should know what was due vnto them for their paines, and take no more, nor commit extortion, by a Statute made Anno 11. H. 7. it was enacted, That euery Gauger, Packer, and Searcher shall take no more for gauging of a barrell of salmon, herring, fish, eles, halfe barrell, and firkin, than for euery piece a farthing, and for his labour for searching and packing, if need be, of a barrell of salmon from head to head a peny, and for boning, naping, and packing of a barrel of fish, if need be, a peny, and for searching and for packing of a barrell of herring, if need be, two pence: and for searching and packing of euerie barrell of eles vj. d: and so in halfe barrels, and firkins of herrings, and eles, they shall take according to the former rate. And if any Gaugre, Searcher, or Packer do the contrary, he shall lose his office, and also be imprisoned forty dayes. But the said Searcher, or Packer shal receiue nothing of the said fees by colour of their office, but onely for such Buts, Barrels, halfe Barrels, and Firkins, as by them shall bee sufficiently searched and packed, and were not sufficiently packed before. St. 11. H. 7. 23.

Prevention of extortion in Ordinaries and their officers.

27 In the raignes of K. Edward the third, and K. Henry the fift, the Commons seuerall times complained in parliament of diuers extortions committed by the Ordinaries, & their officers, in probat of Testaments, making of Inuentories, and giuing of Acquitances, as it doth appeare by the statute of Anno 31. Ed. 3. and Anno 3. H. 5. But because the former of those statutes inflicted no condigne punishment vpon the offendors therein, and the later is expired; and also, for that the same extortions enormity did encrease: Therfore for the redresse of the same, by a Statute made Anno 21. H. 8. it was established, That nothing shall be demaunded, receiued, or taken by any Bishop, Ordinarie, Archdeacon, Chancellor, Commissarie, Officiall, nor any other person or persons whatsoeuer, hauing authoritie to take, or receiue probation, insinuation, or approbation of Testament, or Testaments, by him, or themselues, nor by his, or their Registers, Scribes, Praisors, Summoners, Apparitors, or by any other of their Ministers, for the probation of any Testament, or for writing, sealing, praising, registring, fines, making of inuentories, giuing of Acquitances, or for any cause concerning the same, where the goods of the Testator of the said Testament, or person so dying doe not amount clerly ouer & abouc the value of C. s. sterling: except only to the scribe to haue for the writing of the probat of the Testament of him deceased, vj. d. And for the commission of administration of the goods of any man deceasing intestate, not being aboue the like valew of C. s. clere vj. d. And when the goods of the Testator do amount ouer and aboue the clere valew of C. s. and do not exceed the summe of forty pounds sterling, Then no Bishop, Ordinary, nor other person or persons whatsoeuer, hauing authoritie to take probation St. 31. Ed. 3. 41 St. 3. H. 5. 8. St. 21. H. 8. 5.

The Ordinaries duty for probat of Testaments.

The goods not amounting to C. s.

The goods not amounting to xl. l.

of

of any Teſtament, by himſelfe, or any of his miniſters, for the probation, inſi-
nuation, & approbation of any teſtament or teſtaments, or for the regiſtring,
ſealing, writing, praiſing, making of Inuentories, giuing of acquitances,
fines, or any other things concerning the ſame, ſhall take, or cauſe to be taken
of any perſon or perſons, onely xy. ſhillings vj. pence, and not aboue, whereof
to the Ordinarie for him and his miniſters, x. ſhillings vj. pence, and to the
ſcribe the xy. pence reſidue, for regiſtring of the ſame. And where the goods of
the Teſtator doe amount aboue the clere valew of fortie pounds ſterling:
then the Ordinary by himſelfe, nor any of his Miniſters for the probation of
any teſtament, or for the regiſtring, ſealing, &c. or for any thing concerning
the ſame probat, ſhall take of any perſon but onely fiue ſhillings, and not a-
boue, whereof to be to the ſaid Ordinarie for him and his miniſters, two ſhil-
lings ſix pence, and not aboue, and two ſhillings ſix pence reſidue to be to the
ſcribe for the regiſtring of the ſame: Or elſe the ſcribe to be at his liberty to re-
fuſe the two ſhillings ſix pence, and to haue for the writing of euery ten lines
of the ſaid teſtament a penny (whereof euery line to containe in length ten in-
ches.) And euery ſuch Biſhop, Ordinarie, or other perſon, hauing authoritie
to take the probation of any teſtament, their Regiſters, Scribes, and Mini-
ſters, ſhall approue, inſinuate, ſeale, and regiſter the ſaid Teſtaments, and
deliuer the ſame ſealed with the ſeale of their office, to the executor or execu-
tors named in ſuch teſtaments for the ſummes aboueſaid, and in manner and
forme aboue rehearſed with conuenient ſpeed, without any fruſtratory delay.
If any perſon die inteſtate, or the executors named in any ſuch teſtament, re-
fuſe to proue the ſaid teſtament: Then the Ordinarie, or other perſon or per-
ſons, hauing authoritie to take probat of teſtaments, ſhall grant the admini-
ſtration of the goods of the Teſtator, or perſon deceaſed, to the widdow of the
ſame perſon, or to the next of his kin, or both, as by the diſcretion of the ſame
Ordinarie ſhall be thought good, taking ſurety for the true adminiſtration of
the ſame goods, and taking nothing for the ſaid adminiſtration graunted, vn-
leſſe the goods of the perſon ſo deceaſed amount aboue the value or ſumme of a
hundred ſhillings. And in caſe the goods of the perſon ſo deceaſed amount a-
boue the value of a hundred ſhillings, and not aboue vj. pounds, then he and
his officers ſhall take only two ſhillings ſix pence, and not aboue. And in caſe
any perſon or perſons at any time require a copie or copies of a teſtament proo-
ued, or inuentorie made; then the ſaid Ordinary &c. or his miniſters ſhall
from time to time with conuenient ſpeed, without fruſtratory delay, deliuer,
or cauſe to be deliuered, a true copie, or copies of the ſame vnto the ſaid perſon
or perſons demaunding the ſame, taking for the ſearch, and for the making
of the copie of either of the ſaid teſtament or inuentorie, but onely ſuch fee, as
is before rehearſed for the regiſtring of the ſaid teſtament; or elſe the ſcribe or
regiſter to be at his libertie to demaund, haue, and take for euery tenne lines
thereof, being of the proportion before rehearſed, one penny. But where any
perſons hauing authority to take probat of teſtaments haue vſed to take leſſe
ſummes of money than aboueſaid, for the probat of teſtaments, or commiſſion
of adminiſtrations, or other cauſe concerning the ſame, they ſhall take ſuch
ſums for the ſame, as they before the making of this Act vſed to take, and not
aboue. Euery Biſhop, Ordinary, Archdeacon, Chauncellor, Commiſſarie,
Officiall, and other perſon and perſons, hauing authoritie to take probat of
teſtaments, their Regiſters, Scribes, Praiſors, Summoners, Apparitors,
and all other their miniſters whatſoeuer they be, that ſhall doe, or attempt, or
cauſe to be done, or attempted againſt this Act, in any thing, ſhall forfeit for e-

The goods exceeding fortie pounds.

In adminiſtration graunted.

The fees for copies.

The forfeiture of the offendor.

euery time ſo offending, to the party grieued in that behalfe, ſo much mony as he ſhall take contrary to this Act, and ouer that ſhall forfeit to the king and the party grieued r.l. to be recouered by A.I.B.&c. wherein no W.E.P. And euery of the ſame Biſhops, and other perſons, which ſhall incurre the danger of ſuch penalty, ſhall be charged onely for himſelfe, and none of them ſhall be chargeable to the penalty for others offences.

Extortion in an Ordinary for the Seale of a Citation.

28 Shortly after the making of the foreſaid ſtat. of añ 21.H.8. the graund Councell of the realme being as carefull that Ordinaries, or their Officers, ſhould no more commit extortion in ſealing of Citations, than they might in prouing of Wills, granting of Adminiſtrations, or ſuch like, did therefore by a ſtatute made añ 23.H.8. ordaine, That if any Archbiſhop, Biſhop, Ordinary, Officiall, Commiſſary, or other perſon hauing ſpirituall iuriſdiction, or any ſubſtitute, or miniſter of his, do aſke, demand, take, or receiue, more than iij.ſ. for the ſeale of a Citation, he ſhall pay to the party, of whom he doth demand, take, or receiue the ſame, double dammages, and coſts, and ſhall forfeit for euery offence r.l. to the king, and I. to be recouered by A.I. wherein no W.E.P.&c. St.23.H.8.9.

Mortuaries.

29 Becauſe in former times it was vncertaine, & by this means, oft times great queſtion did grow, what, and how much parſons, vicars, or other ſpirituall men, or their farmors ought to take for Mortuaries, or Coarſe preſents, after the death of their pariſhioners: Therefore to the intent that the ſame ſhould be limited in certainty, and not be exceſſiue, nor any Extortion, Exaction, or other wrong committed in the taking, or receiuing of them, by a ſtatute made añ 21.H.8. it was eſtabliſhed, That no perſon, vicar, curate, or pariſh prieſt, nor any other ſpirituall perſon, nor their farmers, bailifes, or leſſees, ſhal haue, take, receiue, or demand of any perſon or perſons within this realme, for anie perſon or perſons dying within the ſame, any maner of mortuary or coarſe preſent, nor any mony, or other thing for the ſame, more than is hereafter expreſſed: Nor ſhal conuent, or call any perſon before any Iudge ſpiritual, for the recouery of any ſuch mortuaries, or any other thing for the ſame, more than is hereafter expreſſed: vpon paine to forfeit for euery time ſo demanding, receiuing, taking, conuenting, or calling any ſuch perſon or perſons before any ſpirituall Iudge, ſo much in value, as they ſhal take aboue the ſumme limited by this Act, and ouer that, rl.ſ. to the party grieued, contrary to this Act: for the which the party grieued ſhall haue an Action of debt by W.B.P. or I. in any of the kings courts, wherein no W.E.P.&c. But it is lawfull for any ſpirituall perſon to take any ſumme of mony, or other thing, which by any perſon dying ſhall be giuen and bequeathed to him, or to the high Altar of the Church. St.21.H.8.6.

The penaltie for extorting for a Mortuarie.

A Legacie giuen to a ſpirituall perſon.

B

But one mortuary for any perſon.

No Mortuary or Coarſe preſent ſhall be giuen or demaunded of any perſon, but in ſuch place onely where Mortuaries haue beene vſed to be paied and giuen: Nor anie perſon ſhall pay Mortuaries in more places than one, that is to ſay, in the place of his moſt dwelling and habitation, and there but one Mortuarie. St.21.H.8.6.

C

The perſons exempte for all Mortuaries.

No Mortuarie ſhal be taken, or demanded of any perſon whatſoeuer he be, which at the time of his death hath in moueable goods vnder the value of ten marks. No perſon, curat, or other ſpirituall perſon, nor any of their farmors, bailifes or leſſees, ſhall for any perſon dying, or dead, and being at the time of his St.21.H.8.6.

his death of the valew in moueable goods of ten markes or more, aboue his debts paied, and vnder the summe of thirty pounds, take for a mortuarie aboue three shillings foure pence in the whole: And for a person being at the time of his death of the valew of xxx. pounds aboue his debts paied in moueable goods and vnder the value of forty pounds, there shall no more be taken for a Mortuarie than fiue shillings eight pence: And for a person hauing at the time of his death of the value in moueable goods of fortie pounds or aboue, to any summe, there shall no more be taken, paied, or demaunded for a Mortuarie, than ten shillings in the whole.

D

Who shall pay no Mortuaries.

St.21.H.8.6. No parson, vicar, curat &c. or other, shall take, demaund, or aske any Mortuarie, or other thing by way of mortuary, for any woman being couert baron, nor for any child, nor for any person not keeping house, nor for any wayfaring man, or other that maketh not residence in the place where they shall happen to die: But the mortuaries of such wailaring persons shalbe answerable (in places where mortuaries haue beene accustomed to be paid, and in maner, forme, & rate aboue mentioned and none otherwise) in the places where such wailaring persons, at the time of their death had their most habitation, house, and dwelling place, and no where else.

E

Mortuaries in wales, Barwicke, and the Marches.

St.21.H.8.6. No Mortuaries or Corse presents, nor any summe of money for them, shal be demaunded, or had in the parts of Wales, nor in the Marches of the same, nor in the towne of Barwicke, or the Marches of the same, but onely in such places where Mortuaries haue beene accustomed to be paied: Neither shall any Mortuaries, nor Corse presents, nor any thing for them be demaunded, or had in those places, but onely after the order, and maner aboue specified, and none otherwise, nor for any other person than is aboue limited. But it is lawfull to the Bishop of Bangor, Landaffe, S. Dauid, and S. Asse, and likewise to the Archdeacon of Chester, to take such Mortuaries of the priests within their Dioceses and Iurisdictions, as heretofore haue beene accustomed.

St.21.H.8.6. No person shall be compelled in such places (where Mortuaries haue beene accustomed to be taken of lesse valew than is aforesaid) to pay any other mortuaries, or more for anie mortuarie, than hath beene accustomed: Nor anie Mortuarie shall be demanded, taken, or had in such place, of any person or persons exempt by this Act, nor contrary to this Act.

F

Mortuaries of lesse valew by custome.

30 There be certaine other extortions, or exactions in spirituall, Ecclesiasticall, or Scholasticall causes, which Antiquitie did not know, or dreame of, and therefore neither made Statutes, or ordained any Temporall Lawes against them; but the same, hauing great societie and intermixture with Simonie, & being sprung out of a spurre of the rot of Auarice, are so secretly put in practise, that humane policie only, will be hardly able to know them, and lesse to represse them; for in most cases the offendors therein do wittingly enter into corrupt, and wilfull periurie, and vpon premeditate consideration doe violate their oathes solemnely and aduisedly taken, when they doe first enter into their owne vocations and degrees. It is a foule and odious fact, and hatefull in the eies, eares, and hearts of all good persons, that a man to whom the lady hath giuen no profit, interest, or right, in the tithes, glebe, or other fruits of a Benefice, but onely a bare and naked authority to present, collate, or admit a worthy, meet, and fit man to the same, should for a lease, annuitie, money,

ney, or other reward, preſent, collate, or admit a man, be he worthy or vnworthy, to the ſame: Or that a man who doth, or ought to come to a benefice with cure of ſoules freely, ſhould for any mony, penſion, or other conſideration, corruptly reſigne or exchange the ſame: or that a man in whom the Law hath repoſed a ſpeciall truſt, to make choice of miniſters, and preachers, according to their vertue, learning, and worth, ſhould admit them for money, or other reward: Or that they who haue but onely the nomination, or preſentation, of a fellow, ſcholler, or other perſon, to any place in a colledge, ſchole, or other ſocietie, ſhould take money or other reward for their voices or aſſents in ſuch election: Or that he who hath place in ſuch a ſocietie ſhould take reward for the reſigning, or leauing of it, as if the ſame places and liuings were their own lawfull freehold, and they authoriſed to make ſale thereof: the which grieuous and irreligious enormities, the high court of Parliament aſſembled Anno 31. El. did there indeuour and ſhew their good meaning to reforme, by an Act wherein it was agreed, That if any perſon or perſons, bodies politike or corporat, ſhall, or doe, for any ſumme of money, reward, gift, or profit, directly or indirectly, or for or by reaſon of any promiſe, agreement, graunt, bond, couenant, or other aſſurance, directly or indirectly, preſent or collate any perſon to anie Benefice with cure of ſoules, dignitie, prebend, or liuing Eccleſiaſticall: Or giue or beſtow the ſame, for, or in reſpect of anie ſuch corrupt cauſe or conſideration: Then euerie ſuch preſentation, collation, gift, and beſtowing, and euerie admiſſion, inſtitution, inueſture, and induction thereupon ſhall be vtterly voide, and of none effect in Law. And it ſhall and may be lawfull, to and for the Queene, her heires and ſucceſſours, to preſent, collate vnto, or giue, or beſtow euery ſuch Benefice, dignitie, prebend, and liuing Eccleſiaſticall, for that one time, or turne only. And all & euery perſon or perſons, bodies politike and corporat, that from henceforth ſhall giue or take, anie ſuch ſumme of money, reward, gift, or benefit, directly or indirectly: Or that ſhall take or make anie ſuch promiſe, graunt, bond, couenant or other aſſurance, ſhall forfeit the double valew of one yeares profit of euerie ſuch Benefice, dignitie, &c. to the Queene and I. to be recouered by A. B. I. wherein no W. E. P. And the perſon ſo corruptly taking, procuring, ſeeking, or accepting any ſuch Benefice, dignitie, prebend, or liuing, ſhall thereupon, and from thenceforth be adiudged a diſabled perſon in law, to haue or enioy the ſame Benefice &c.

31 And by the ſame ſtat. of añ 31. El. it was further eſtabliſhed, That if any perſon ſhall for any ſumme of mony, reward, gift, or profit whatſoeuer, directly or indirectly, (other than for vſual and lawfull fees) or for, or by reaſon of of any promiſe, agreement, grant, couenant, bond, or other aſſurance, of, or for any ſumme of money, reward, gift, or profit whatſoeuer, directly or indirectly, admit, inſtitute, inſtall, induct, inueſt, or place any perſon, in, or to any benefice with cure of ſoules, dignity, prebend, or other liuing Eccleſiaſticall: then euery ſuch perſon ſo offending ſhal forfeit the double value of one yeers profit of euery ſuch benefice &c. to the Q. and I. to be recouered by A. B. I. wherein no W. E. P. And thereupon immediatly from and after the inueſting, inſtallation, or induction therof had, the ſame benefice, dignity &c. ſhalbe eftſoons meerely void. And the patron, or perſon to whom the Aduowſon, gift, preſentation, or collation ſhall by law appertaine, ſhall and may by vertue of this Act, preſent, or collate vnto, giue, and diſpoſe of the ſame Benefice, dignitie, &c. in ſuch ſort to all intents, as if the party ſo admitted, inſtalled, inueſted, inducted, or placed,

Exaction for preſenting or collating to a Benefice.

31. El. c. 6.

The penalty of the corrupt taker of a Benefice.

Exaction for admitting to a Benefice.

31. El. c. 6.

placed, had bene, or were naturally dead. But no title to conferre, or present by lapſe, ſhall accrue vpon any voidance mentioned in this Act, but after ſixe moneths next after notice giuen of ſuch voydance by the Ordinarie to the patron. Notice of Lapſe.

St. 31. Eliz. 6. 32 By the ſtatute of Anno 31. Eliz. it was moreouer ordained, That if any Incumbent of any Benefice with cure of ſoules doe, or ſhall corruptly reſigne or exchange the ſame: Or corruptly take, for, or in reſpect of the reſigning, or exchanging of the ſame, directly or indirectly, any penſion, ſumme of mony, or benefit whatſoeuer: Then aſwell the giuer, as the taker, of any ſuch penſion, ſumme of money, or other benefit corruptly, ſhall loſe double the value of the ſumme ſo giuen, taken, or had, to the Q. and I. to be recouered by A. P. I. wherein no W. E. P. But this Act ſhall not take away, or reſtraine any penaltie preſcribed by the Eccleſiaſticall law, for any offence in this Act mentioned, but the ſame ſhall remaine in force, and be put in execution, as before &c. Exaction for reſigning or exchanging of a Benefice. Penalties by the Eccleſiaſticall law.

St. 31. Eliz. 6. 33 By the foreſaid ſtatute of Anno 31. Eli. it was alſo enacted, That if any perſon or perſons whatſoeuer, ſhall, or doe receiue or take any money, fee, reward, or other profit directly or indirectly: Or ſhall take any promiſe, couenant, bond, agreement, or other aſſurance, to receiue, or haue any money, fee, reward, or any other profit directly or indirectly, either to him, or themſelues, or to any other of their or any of their friends (all ordinary and lawful fees only except) for, or to procure the ordaining, or making of any miniſter, or giuing any Orders, or licence, or licences to preach: then euery perſon and perſons ſo offending, ſhall for euery ſuch offence forfeit ten pounds, and the partie ſo corruptly made miniſter, or taking Orders tenne pounds to the Q. and I. to be recouered by A. P. I. wherein no W. E. P. And if at any time within vij. yeares next after ſuch corrupt entring into the miniſterie, or receiuing of Orders, he ſhall accept, or take any Benefice, liuing, or promotion Eccleſiaſticall, then immediatly from and after the induction, inueſting, or inſtallation therof, or thereinto had, the ſame benefice, liuing, &c. ſhall be eftſones meerely void. And the patron, or perſon, to whom the aduowſon, gift, preſentation, or collation, ſhall by law appertaine, ſhall, and may (by vertue of this Act) preſent, or collate vnto, giue, and diſpoſe of the ſame benefice, liuing, &c. in ſuch ſort to all intents, as if the partie ſo inducted, inueſted, or inſtalled, had bene, or were naturally dead: Any law, ordinance, qualification, and diſpenſation to the contrary notwithſtanding. Exaction for making of miniſters, or giuing licence to preach.

St. 31. Eliz. 6. 34 By the ſame ſtatute of Anno 31. Eli. for the cauſes before rehearſed, it was alſo prouided, That if any perſon or perſons, bodies politike, or corporat, which haue election, preſentation, or nomination of any fellow, ſcholler, or any other perſon, to haue rome or place in any Churches collegiat, Colledges, Schooles, Hoſpitals, Halls, or Societies, ſhall haue, receiue, or take, any mony, fee, reward, or any other profit, directly or indirectly, either to him, or themſelues, or to any other of their, or either of their friends, for his or their voice, or voices, aſſent or aſſents, or conſent in electing, chooſing, preſenting, or nominating of any officer, fellow, ſcholler, or other perſon to haue any rome or place in any of the ſaid Churches, Colledges, Halls, Schooles, Hoſpitalls, or Societies: Then and from thenceforth, the place, rome, or office, which ſuch perſon ſo offending ſhall then haue in the ſaid Churches, Colledges, &c. ſhall be void. And then aſwell the Queene, her heires, and ſucceſſors, and euery other Exaction for a voice in electing of a fellow or ſcholler

perſon and perſons, or their heires, or ſucceſſors, to whom the preſentation, gift, donation, election, or diſpoſition ſhall of right belong, of any ſuch of the ſaid roomes or places of the ſaid perſon offending, as is aforeſaid, ſhall or may at their pleaſure, elect, preſent, nominate, place, or appoint any other perſon or perſons, in the roome, office, or place of ſuch perſon or perſons ſo offending, as if the ſaid perſon or perſons were naturally dead.

Exaction by taking mony to reſigne a place.

35 For ſome reaſon before alleadged, it was lately ordained by the ſaid ſtatute of Anno 31. Eli. That if any fellow, officer, or ſcholler of any of the ſaid churches, colledges, ſchooles, halls, hoſpitals, or ſocieties, or other perſons hauing roome or place in any of the ſame, ſhall at any time hereafter, directly or indirectly take, or receiue, or by any way, deuiſe, or meanes, contract, or agree to haue, or receiue any money, reward, or profit whatſoeuer, for the leauing or reſigning vp of the ſame his roome, or place, for any other to be placed in the ſame: then euery perſon ſo taking, or contracting, or agreeing to take, or haue any thing for the ſame, ſhall forfeit double the ſumme of mony, or value of the thing ſo receiued and taken, or agreed to be receiued or taken. And euery perſon, by whom, or for whom, any money, gift, or reward as aforeſaid ſhalbe giuen, or agreed to be paid, ſhalbe vncapable of that place, or roome, for that time, or turne, and ſhall not be, nor had, nor taken to be a lawfull fellow, ſcholler, or officer, of any the churches, colledges, halls, hoſpitals, ſchooles, or ſocieties, or to haue ſuch roome or place: But they to whom it ſhall appertaine at any time thereafter, ſhall and may elect, chooſe, preſent, and nominate any other perſon fit to be elected, preſented, or nominated into the ſaid roome, or fellowſhip, as if the ſaid perſon, by, or for whom any ſuch money, gift, or reward ſhalbe giuen, or agreed to be paid, were dead, or had reſigned, and left the ſame. And to the intent that euery perſon that is or may be ſubiect to the ſaid penalties, may take notice thereof, by the ſaid ſtatute it was alſo ordained, That at euerie election of fellowes, ſchollers, and officers, this Act, and the Statutes of the ſame places, concerning ſuch election, ſhal be publikely read: vpon paine that euerie perſon in whom the default ſhall be, ſhall forfeit fortie pounds to him that will ſue, and to the ſame colledge, ſocietie, &c. 31a. 31. Eliz. 6

This ſtatute ſhall be read at euery election.

Extortion by gathering others mony.

36 If any perſon doe leuie and receiue money of certaine other perſons, which they ought to pay in diſcharge of a fifteene, due by a towne to the king, and he doth not pay the ſame money to the king, he may be indited of extortion, and the matter being found accordingly, the offendor ſhall be diſtrained to pay the ſame money to the people of the ſaid towne, toward their diſcharge of the ſaid fifteene. 27. Aſſ. pl. 15.

Extortion for amerciament in a court Baron.

37 If a man be amerced in a Court Baron for a treſpaſſe done to the lord of the Mano, and the amerciament is aſſeered in the Lords Court, this is extortion in the Lord: But if the Lord do accept the amerciament, that is a ſufficient ſatisfaction for the treſpaſſe, and a good barre in an Action of Treſpaſſe brought by the Lord againſt the offendor. 48. Ed. 3. 8.

No extortion to take lawful fees.

38 But though Extortion and Exaction be prohibited by the Lawes and Statutes before ſpecified, as things offenſiue to the lawes and iuſtice of the realme; yet the ſame lawe doth allow to each officer and other perſon, to haue a reaſonable conſideration & ſatisfaction for his paines, according to his countenance, degree, and calling, and the paines and ſeruice which he ſhall doe and imploy

34.H.6.38. 8.Ed.4.11. imploy in the furtherance or execution of iustice: as the Lord Chancellor, and they which write to the great seale are not to make writs without their fees: and if a prisoner be discharged of his imprisonment by the court, paying his fees, the Marshall of the Kings Bench, the Shirife of the countie, nor any Gaoler, or keeper of prison, ought to detaine him in prison, for meat, drinke, or other thing which he hath bought, but for his fees onely. But if a man be committed to prison for suspition of felonie, and after he is acquitted thereof, and discharged by the court paying his fees; the Shirife or Gaoler may take of him barre-fees, and this is no extortion, but iustifiable: for this money is not taken contrary to the foresaid statute of Añ 23.H.6. which prohibiteth the shirife to take money for shewing ease or fauour to any person arrested. For this barre-fee is mony which the court from one age to an other, hath in discretion alligned the prisoner so discharged to pay to the Shirif, or Gaoler for his great paines and charge, for the safe keeping of the prysoners, for attending vpon them, & for conueying of them safely to the barre, and from it to the prison. If a man be committed two prysons for to seuerall felonies, and after he is discharged by the Court paying his fees, he shall pay but one fee, for the Gaolers attendance was but vpon one person. And if the Shirife or Gaoler take from a prisoner in his custodie, the money in his purse, or any garment that he hath, this is no extortion, but a trespasse, for the recouerie whereof the prysoner may haue an Action of trespasse against the same Shirife or Gaoler, and recouer the value thereof in dammages. And if a man indicted and arraigned of Felonie, doth plead and shew forth the Kings pardon of the same felonie, which is allowed by the court, whereupon he doth pay and giue his fees of gloues to the Iustices, and other officers of the court, this is no extortion, but an auncient fee, and lawfully due vnto them. If the Iustices in an especiall Assise do take their lawful fees, this is no extortion for they are not bound to sit vnlesse they haue them.

21.H.7.16.

Taking of barre-fees no extortion.

26.Ass.p.47.

4.Ed.4.10.

No extortion for gloues giuen vpon the allowance of pardon.

34.H.6.38.

34.H.6.42. 39 If a man that is attainted of Trespas, do come into the Court, where he was attainted, and prayeth to make his fine to the King, and offereth pledges for his fine, if the Warden of the Fleet, or other keeper of a prison do take any fees of him, it is extortion, seeing he came in gratis, and out of ward, and yelded himselfe to the Court. But if there be proces awarded against him for his said fine, and he be taken thereby, then he shall pay his fees to the warden or keeper &c. And it is no extortion to take them, for that he came in by compulsion, and not willingly.

Extortion in taking fees of him that doth appeare gratis

Stat.27.H.8. 26. 40 After that by the statute of Añ 27.H.8. it was enacted, That the Kings countrey or dominion of Wales, should be incorporated, united, and annexed to and with the Realme of England, and that al persons borne and to be borne in the said Principalitie and Dominion of Wales should haue, inioy, and inherite all and singuler freedomes, liberties, rights, priuiledges, and laws within this Realm, and all other the kings dominions, as other the Kings subiects borne within the same, haue, inioy, and inherit. And that the lawes, ordinances and statutes of this Realme of England for euer, and none other, shall be vsed and executed in the said Dominion of Wales, and euery part thereof, in like maner, forme, and order, as they be in this Realme. And that the said dominion of Wales was by the said statute of 27.H.8. and by the statute of Añ 34.H.8. diuided into vij. Shires, and a President & Councell established there and in the Marches of the same, with all officers, clerkes, and incidents to the same.

ſame. And that there ſhould be Juſtices of Aſſiſe and Gaole deliuerie there, which ſhould kepe Seſſions in euery of the ſaid ſhires twice in the yeare, and a Marſhall, and a Crier in euery circuit. And that there ſhould be original and iudiciall ſeales, for the ſealing of Writs and proces in the ſaid ſhires: And that there ſhould be foure Prenotaries in Wales, & alſo certain Juſtices of Peace and Quorum, and a Cuſtos Rotulorum, Bailifes of Hundreds, Shiriſes, Eſcheators, Coronors, & Conſtables of Hundreds in euery of the ſaid vij. ſhires. Then to preuent and auoyd extortion of the forſaid Officers in Wales, and to the intent that the ſaid Officers might know what money to demaund, and euery ſuter what to pay for al Proces original and iudicial, declarations, pleadings &c. by the ſaid Statute of An 34. H. 8. it was partiuularly expreſſed how much ſhould be paied for the writing & ſealing of originall and iudiciall writs and proces, and what Prenotaries ſhall take for their fees, what euery Marſhall and Crier of the Juſtices ſhall haue, and what fees the ſaid Shiriſes and Coroners ſhall take, in many, diuers, and ſeuerall caſes. But after, in and by the ſaid Statute of An 34. H. 8. it was further ordained, That in all and euery writs originall, or iudiciall, or other proces, pleas, or writings which be not expreſſed in the ſaid ordinance, the fees thereof, aſwell for the ſeales as writing, ſhalbe rated by the ſaid Preſident, Councel, and Juſtices, or three of them whereof the ſaid Preſident to be one, by their diſcretion from time to time, as the caſe ſhall require. And they ſhall haue full power from time to time, to aſſeſſe and appoint what fee the ſaid Sheriffes, Eſchetors, and Coroners, and their miniſters, Prenotaries and their clerkes, & other miniſters of Juſtice in the ſaid Shire, ſhall haue of the Kings ſubiects for any maner writs, plaints, pleas, proces, returnes, or any other matter or thing, concerning or belonging to the execution of their offices and rowmes, and to augment or diminiſh any fee or fees aboue declared, as ſhall be thought by their diſcretions to be conuenient and meet for the common wealth of the Kings ſubiects of thoſe partes of Wales.

The fees expreſſed to preuent Extortion in Wales.

Oppreſsion.

Oppreſsion.

Oppreſsion is a grieuance done by one man or more to the hurt or preiudice of others, without any warrant of law, or colour of iuſtice: or it is a burden or charge which one man doth impoſe on an other, more than the law doth lay vpon him, and is for the moſt part wrought by the ſuperior in countenance, abilitie, or office, to the inferior in the ſame: for the oppreſſor ſicut Nimroth robuſtus venator, & tanquam Leo ſubuerſor in domo ſua, is alwayes offering hard meaſure to them who are to deale with him, vntill they be able and willing to reſiſt him. The fraudulent deceiuor yeeldeth a man ſomething for his money, or at the leaſt giueth a faire colour ſo to do. The extortioner is moſt times an officer, and doth take paines, and is worthy of his due reward, & ſo is tollerable, vntill he wreſteth more than his deſert. But the oppreſſor grapleth for what he can get, and returneth nothing, and wreſteth to reap that which he hath not ſowen, and to gather fruit where he hath not grafted: the marke he roueth at, is his priuat profit, and reſpecteth not how many, and how much he in that cauſe hurteth, ſo that his owne purſe be filled, or his will be accompliſhed. As, euery diſſeiſor who doth vnlawfully expell and put another man out of his freehold, may aptly be termed an oppreſſor, for he doth not put in practiſe that iniurie couertly and ſecretly, by fraud and colluſion vnder hand, as the deceiuor & extortioner do, but by plain and open wrong, and doth ſtand in the face of al his beholders, and commonly inſtifieth that which he hath done. And therefore as the ſaid diſſeiſin and oppreſſion is manifeſt, ſo hath the ſtat. of Weſt. 2. appointed a ſpeedie and manifeſt remedie to the diſſeiſee to redreſſe and reforme the ſame, which is by an Aſſiſe of Nouel diſſ. to the end, that as he was newly and lately diſſeiſed ſo he might be quickly and ſpeedily reſtored. And becauſe the law doth adiudge a man oppreſſed and iniured, who is diſſeiſed of eſtouers of wood, or of profit to be taken in wood, nuts, acorns, and of other fruit to be gathered: or of a corrody of deliuering corne, and other victuals and neceſſaries, to be receiued yearely in a place certaine: or of toll, tonnage, paſſage, pontage, pawnage, or ſuch like things to be taken in places certain: or of the keeping of woods, forreſts, parks, chaſes, warreines, gates, and other baſtiwikes and offices in fee: or of common of paſture, turbaries, fiſhing, and ſuch like, which a man hath belonging to his freehold, or without his freehold by ſpeciall deed, at the leaſt for terme of life: or when one man doth paſture an others ſeuerall: or when tenant for yeares, or garden of a tenement doth alien the ſame in fee, whereby the freehold is tranſferred to the feoffee: therefore in all the caſes aforeſaid, that ſaid ſtat. of Weſt. 2.

what oppreſſion is.

Oppreſſion by diſſeiſin.

Of what things one may be diſſeiſed.

Sta. 13. Ed. 1. 25.

doth

doth giue to the party ſo oppreſſed and diſſeiſed, his remedy to recouer the ſame by the ſaid Aſſ. of Nouel diſſ. in which the writ ſhal be De libero tenemento. If tenant by Elegit be put out of the tenement which he hath in execution: or tenant by Statute marchant be put out of the land which he hath in execution: or tenant by Stat. ſtaple be put out of the land which he hath in execution: or tenant by Recogniſance in the nature of a Statute ſtaple, his executors, adminiſtrators, or aſſignes, or any of them be diſſeiſed, or put out of the land which he or they haue in execution, he or they ſo diſſeiſed, or put out, may haue and maintaine an Aſſiſe, for it is to him or them a diſſeiſin and an oppreſſion. If any perſon who hath an eſtate of inheritance or freehold, in any parſonage, vicarage, portion, pention, tithes, oblations, or other Eccleſiaſticall profit, made temporall, be deforced, kept, or put from the ſame, this is a diſſeiſin and oppreſſion, and the party ſo wronged may haue an Aſſiſe to recouer the ſame. And if any Eſcheator, Sheriffe, or other of the K. Bailifes, ſhall by colour of his office (without ſpeciall warrant or certaine authoritie which belongeth to his office) diſſeiſe any man of his freehold, or of any thing which belongeth to his freehold, this is an oppreſſion, & the diſſeiſee may at his choiſe either haue an Aſſiſe, and recouer double dammages, and the defendant ſhal be amerced, or elſe the King vpon complaint ſhall redreſſe the matter. If lands be graunted by the Kings Patent, without any title found by Enqueſt, or where the Kings entrie is not giuen by the law, and if any be put out or diſſeiſed of his freehold thereby, this is an oppreſſion: And the partie put out, ſhall haue a ſpeciall Aſſiſe againſt the kings Patente, and recouer treble dammages.

Sta. 13. Ed. 1.

Sta. 13. Ed. 1. 25.

Sta. 13. Ed. 1.

Sta. 27. Ed. 3. 9

Sta. 23. H. 8. 9.

Sta. 32. H. 8. 7

Sta. 3. E. 1. 24.

Sta. 1. H. 4. 8.

Oppreſſion by appriſement of common.

2 If the Lord of a Mannor (wherein he hath certaine freehold tenants, and certaine neighbours) do appriſe ſome part of the walks, woods, or paſtures of the ſame Mannor, not leaning to his ſaid tenants and neighbours ſufficient common of paſture vnto their tenements, or not ſufficient and conuenient ingreſſe and regreſſe to the ſame, this is an oppreſſion of the ſame tenants, and a diſſeiſin of their common. And the ſayd tenants and neighbours (or any of them) may by force of the Statutes of Merton, and Weſt. 2. bring an Aſſiſe of Common of paſture againſt the Lord who doth ſo appriſe and oppreſſe. And if it be found by the Iurie, that their ingreſſe and regreſſe were any thing hindered by the deforcors, or that they had not ſufficient paſture, then they ſhall recouer their ſeiſin by the view of the Iurors: ſo that by their diſcretion and oath they ſhall haue ſufficient paſture, ingreſſe and regreſſe, and the diſſeiſors ſhall be amerced, and render dammages, which dammages (by force of the ſtatute of Anno 3. Ed. 6.) ſhal be trebled by the iudgement of the Court where ſuch Aſſiſe and iudgement ſhal be had. And ſo it is if the Lord of a Mano doth ſurcharge the common with ſo many cattell, as that his freeholders or neighbours cannot haue ſufficient common for their cattell, as they had wont to haue, or as they ought to haue belonging to their tenements, this is an oppreſſion and diſſeiſin of their common, and any of them may bring an Aſſiſe of Common of paſture againſt the ſaid Lord, and recouer his common, and his dammages. But if there be two Lords of two ſeuerall Mannors, which haue two walks adioyning, parcell of their mannors, lying together without incloſure or ſeperation, and yet the bounds of each manno is well knowne by certaine meers and marks, in which walks the tenants of the one manno and of the other haue reciprocally had and vſed common by cauſe of vicinage: In this caſe one of thoſe Lords may incloſe againſt the other, and by that meanes vtterly take away his common by cauſe of vicinage from him, though it hath bin other-

Sta. 20. H. 3. 4
Sta. 13. Ed. 1. 46.

Sta. 3. Ed. 6. 3.

Oppreſſion by ſurcharge of common.

Fitz. Admeſ. 11.
Common 29.

Incloſure of common by cauſe of vicinage, is no oppreſſion.

Co. lib. 4. 38.

13. H. 7. 14.
M. 14. Eliz. Dyer 316.

otherwiſe vſed time out of the remembrance of man. And this common per cauſe de vicinage, is rather an excuſe of a treſpaſſe when the cattell of the tenant of one Manno^r do ſtray into the walks of the other Manno^r, than any certaine inheritance: fo^r the tenants of one Manno^r may not put their cattell into the walk of the other Manno^r, but they may come thither onely by eſcape, and this encloſure is only to p^reuent the eſcape of the cattell, which is a lawfull act, and no opp^reſſion: Fo^r in the caſe afo^reſaid, where the walks of both the Manno^rs be adioyning together, and that the one of them hath common with the other by cauſe of vicinage, and that the one village hath an hund^red acres of common, & the other but fiftie acres of common: in this caſe the inhabitants of the village which hath but fifty acres of common can put no mo^re cattel into their ſaid common of fifty acres, than it wil maintaine, without hauing reſpect to the common in the ſaid hund^red acres, fo^r if they do, it is an opp^reſſion and w^rong, nec è econuerſo: fo^r the o^riginal cauſe of this common by cauſe of vicinage, was not fo^r p^rofit, but fo^r p^reuenting of ſuits in a champian countrey, in reſpect of recip^rocall eſcapes from one Towne to an other.

Co. lib. 7. 5.

Commoners ſhall charge common acco^rding to the quantity thereof.

3 It appeareth by the p^reamble of the ſtatute of Marlebridge, that they who toke diſtreſſes of their tenants, o^r neyghbo^rs, fo^r rents ſuppoſed to be due to them, o^r fo^r any treſpaſſes done to them, and after did d^riue the ſame diſtreſſes fo^rth of the County where they were taken, to be impounded in an other County, were accounted to do it to opp^reſſe them whoſe cattel they ſo did diſtrain and impound, and the ſame was alſo adiudged an act done againſt the peace: whereupon, fo^r the eſchewing of ſuch opp^reſſions, by the ſame ſtatute, and alſo by the ſtatute of Weſt. 1. it was o^rdained, That no man ſhall cauſe a diſtres to be d^riuen fo^rth of the Countie wherein it was taken. And fo^r the auoyding of the like opp^reſſions, v^rations, and troubles, by a ſtatute made Anno 1. & 2. P. & M. it was enacted, That whoſoeuer ſhall d^riue any diſtreſſe out of the Hund^red, Rape, Wapentake, o^r Lath where it was taken (except it be to a Pound ouert within the ſame ſhire, being not aboue th^ree miles diſtant from the place where it is taken) o^r ſhall impound in ſeuerall places, goods diſtrained fo^r any cauſe at one time, whereby the owner ſhall be conſtrained to ſue ſeuerall Repleuies fo^r the deliuerie of the ſame diſtreſſes, ſhall fo^rfeit to the partie grieued fo^r euery ſuch offence fiue pounds, and treble dammages. And whoſoeuer doth take fo^r k^reping in pound, pondage, o^r the impounding of a whole diſtres, aboue iiij. d. o^r doth take ſo much where leſſe hath vſually b^reen taken, ſhall fo^rfeit to the partie grieued fiue pounds, and ſo much as he taketh ouer the ſaid iiij. pence. And becauſe the law hath deuiſed, that one neighbour may diſtrain the goods of an other fo^r his debt, duty, o^r dammages ſuſtained, & that the ſame diſtres ſhall be reaſonable acco^rding to the quantitie of the ſaid ſuppoſed debt, o^r damages, & that then the ſame diſtreſſe ſhalbe put in a pound ouert ſub cuſtodia Legis, vntil it be decided whether the ſame was taken vpon iuſt cauſe o^r not: & not to the end that one neyghbo^r ſhould by diſtrayning vniuſtly opp^reſſe an other, o^r demand of him that which is not due, o^r put him to further charge to trouble than the neceſſity of that cauſe, fo^r the recouery of his own debt o^r damages required: therfo^re by the be fo^re mentioned ſta. of Marlebridge, it was further eſtabliſhed, That if one neighbo^r take a diſtres of an other (wherby he hath receiued loſſe) without award of the B. court, he ſhal make fine acco^rding to the quantity of the treſpas: & neuertheles ſufficient amends ſhall be to them which haue receiued loſſe by ſuch diſtres: O^r if one do diſtrain an other to come to his Court which is not of his fe^e, o^r vpon whom he hath

Sta. 25. H. 3. 4.
Sta. 3. E. 1. 16.

Opp^reſſion by diſtreſſes.

Sta. 1. & 2. P. & M. 12.

Pondage money.

Diſtrayning out of his fe^e.

no

no iuriſdiction by reaſon of his Hundred or Bailiwike, or to taken diſtreſſe without his ſe, or the place where he hath iuriſdiction or bailiwike, he ſhall make fine according to the quantitie of his offence. Or if one do take any vnreaſonable and exceſſiue diſtreſſes, which is grieuous, & more than the quantitie of the debt or dammages, this is an oppreſſion, & he ſhall be amerced: As a man auowed the diſtraining of 200. ſheepe and 16. beaſts for 4. pence rent, and he was amerced therefore: for, all that he tooke aboue 4. ſheepe, were adiudged an oppreſſion, and ſo vnlawful. But if a man diſtrain for homage, the diſtreſſe cannot be exceſſiue, how many beaſts ſoeuer he doth take, for that homage is not valuable, though for rent, fealtie, and other ſeruices, it may be exceſſiue. And in like ſort, if the Lord of a Mannor, or any other, who hath rent iſſuing forth of certaine land, do diſtraine the tenant of the ſame land diuers times for rent, or ſeruices, where none is behind vnpaid, this is an oppreſſion of the ſame tenant who is diſtrained: for in this caſe the partie who claimeth this rent, cannot diſtraine for rent, ſeeing none was due to him, but his diſtreſſe is onely taken to vexe the tenant of the land, and ſo to oppreſſe him. And therefore the ſaid tenãt may haue an Aſſiſe of Souent foits diſtreſſe againſt the ſame Lord, and recouer dammages of him according to the loſſe he hath receiued by the ſame diſtreſſes, viz. for not plowing, or for not manuring his land, or for taking no profit thereby. But it is otherwiſe, if the ſame ſeuerall diſtreſſes were taken for homage. And ſo it is, if a man do diſtraine for rent, or ſeruices, or for any other thing, and depending a ſuit betweene the parties for the ſame rent, ſeruice, or other thing, he who did diſtraine doth diſtraine againe for the ſame rent, ſeruice, or thing, for the which he did diſtraine before, the beaſts or goods of him whoſe he did firſt diſtrain, this is an oppreſſion of him whoſe goods be twice diſtrained: For the redreſſe whereof he may haue a writ of Recaption againſt him who ſo did diſtraine his goods twice for one cauſe, whereby he ſhal recouer dammages for his ſecond diſtreſſe: And alſo he that did take the ſame diſtreſſe, ſhall make fine to the King for his oppreſſion and wrong, though the firſt diſtreſſe were lawfully taken, yea and though the rent or ſeruice for the which he did diſtraine, were behind, vnpaid, or vndone, ſeeing by the firſt diſtreſſe (the cauſe being proued true and lawfull, he might haue had returne of the goods or cattell which he did diſtraine vntill he had bin ſatisfied of the rent, ſeruice, or thing, for the which he did diſtraine. But a man may diſtraine the cattell of him who be eating of his corne or graſſe, or doing any other hurt in his ground, ſo often as he ſhall find them doing hurt therein, & it is no oppreſſion or wrong ſo to do: for he doth not diſtraine twice for one cauſe, as in the former caſe, but diſtraineth ſeuerall times for ſeuerall new offences.

Excelliue diſtreſſe.

41.Ed.3.26. 29.Ed.3.23.

Oppreſſion by often diſtreſſe.

28.Aſſ.p.50. 42.Ed.3.26. Co.lib.4.2. Fitz.Nat.Br. 178. 27.Aſſ.p.51. 28.Aſſ.p.50.

Generall diſtreſſes for one thing.

Lib.Intr.82. Co. lib. 4.82 Fitz.Nat.Br. 71.

A writ of Recaption.

Diſtreſſes for damages feazt.

47.Ed.3.7.

4 And euerie Treſpaſſe which the law doth interpret to be iniuriouſly committed vi & armis, may alſo fitly be termed an oppreſſion: for it is done vpon the offendors owne wrong, without warrant of law: As if one perſon doe enter vpon anothers land, and expell him out of poſſeſſion thereof, whereas his entry is not giuen by the law, or doth enter with ſtrong hand, or multitude of people, and not in peaceable manner, this is an oppreſſion. And ſo it is, if one perſon doe pull downe, breake, or impaire anothers houſe, or any part thereof: Or if one perſon doe fel, cut down, or carry away the Timber, Trees, or Wood of another: Or if one perſon doe fell, cut, tread downe, or carrie away the corne or graſſe of another: Or if one perſon doe with his cattell depaſture, feed, or eat the corne, graſſe, or hay of another: Or if one perſon do take and carrie away the mony, plate, iewels, houſhold-ſtuffe, cattell, corne, hay, or any kind of goods of

Oppreſſion by treſpaſſes.

8.a.5.R.2.5. Fitz. Treſpas 13. 45. 234. 20.H 6.22. 9.Ed.4.28. 9.H.6.64. 21.H.6.5. 21.Ed.4.18. 9.Ed 4.29. 10.Ed.4.4. 21.Ed.4.41 1.H.7.10.

37.H.6.36. 21.H.7.18. 11.H.4.64. 20.H.6.14. 3.H.6.12. 10.H.6.16. 43.Ed.3.13. 4.Ed.3.48. 47.Ed.3.22. 43.Ed.3 35. 1.H.5.1.

of an others: Or if one perſon doe plough, till, eyze, or digge the ground or ſoyle of an other: Or if one perſon doe mayme, impriſon, wound, or beat an other, or doth mayme, wound, or beat the ſeruant of an other, whereby he loſeth his ſeruice: Or if one perſon doe hunt, chaſe, or hawke in the free Warren of an other, or doe take, kill, or deſtroy his game there: Or if one perſon doe fiſh in the Pond, Poole, Mildam, Stew, or other ſeuerall fiſhing of another: Or if one perſon doe breake the doue-houſe of another, or deſtroy the flight of the doues of another: Or if one perſon doe digge the Myne of Tinne, Lead, Stone, Coale, Grauell, Sand, Marle, Chalke, &c. of an other: Or if one perſon doe pull vp and take away the meere ſtones which by conſent haue been ſet betweene his owne ground & anothers: In all & euery of which caſes, the party grieued may purſue an action of treſpas againſt the offendor, and declare that he committed any of the ſaid offences, vi & armis, wherein (if the defendant be attainted) he ſhal pay to the plaintif his dammages ſuſtained, and to the King a fine, for that he hath done an oppreſſion to one of his ſubiects, and made an offence to the law.

Oppreſſion by Nulances.

Fitz. Nat. Bre. 183. 4.Aſſ.pl.3.

5 Euerie Nulance which one perſon doth to the land of another, wherein the owner hath an eſtate for the terme of life, in tayle, or in fee ſimple, may alſo be accounted an oppreſſion: for thoſe Nulances be put in practiſe by the offendors onely will, and by his owne open, playne, and manifeſt wrong to the diſheritance of an other, or to the preiudice of his Freehold, without any warrant of law, or colour of iuſtice: As if one perſon do build or leuie a houſe, a wal, a ſhed, a leanto, a chimney, a gutter, or other ſtructarie, in his owne ground, to the offence of an others freehold, or to the drowning or rotting of his houſe, or to the ſtopping of his light, or way thereunto, this is an oppreſſion. And if one perſon doe leuie, rayſe, abate, or pull downe a Damme, Poole, Pond, or Ditch, to the hurt of an others Freehold, that is an oppreſſion. And if one perſon doe ſtoppe, ſtraiten, or turne an auncient watercourſe, to the hurt of an others Freehold, or in ſuch ſort as it doth drown the ground or ſoile of an other, that is an oppreſſion. And if one perſon do ſtoppe, ſtraten, or greatly impare anothers highway, which he hath belonging to his Freehold, that is an oppreſſion. If one perſon doe conuey water to his houſe or ground, by a pipe of lead, timber, or vault of ſtone, and an other perſon will make another pype out of that pipe, to take away part of the ſame water, that is an oppreſſion of him that made the firſt pype. And if one doe erect a lime-kill neere vnto an others dwelling houſe, the ſmoake and heat whereof, when it is ſet one fire, doth annoy the inhabitant of the ſaid houſe and his familie, or doth ſcorch or dry vp the fruit trees in his orchard, that is an oppreſſion. And if one perſon hath the freehold of a ſeuerall fiſhing in a riuer, pond, poole, moat, mill, damme, or other water, and another perſon will build a dye-houſe adioyning, or neere vnto it, and then will powre out, or cauſe to run from thence, corrupt aſhes, dung, ſlime, filth, or other annoyances, into the ſaid ſeuerall fiſhing place, to the diſtruction of the fiſh there, whereby the owner doth loſe the benefit of his ſeuerall fiſhing, that is an oppreſſion of him. And if one perſon will erect or ſet vp a Faire or Market, to the preiudice or hinderance of anothers Faire or Market, that is an oppreſſion of him who had the firſt Faire or Market. And if one perſon do lay timber, faggots, ſtones, lime, ſand, grauell, dung, or any other thing, vpon or againſt the houſe of another, whith do rot, putrifie, corrupt, or impaire the walls, timber, or other part of the ſame houſe, or any corrupt, noiſome, or ſtinking thing, the ſauor or ſmell whereof is offenſiue to the inhabitant of the ſame houſe and his family, that is an oppreſſion of the ſame inhabitant:

4.Ed.3.48. 18.Ed.3.22. 21.Ed.3.2. Co.lib.5.101. Li.Int.406. 46 Ed.3.23. 7.Ed.3.56. 27 Ed.3. 28. 12.H.4.3. 8.Ed.4.5. 42.Ed.3.27. 3.Eliz. Dyer 205. 14.Eliz. Dyer 310. 4.E.3.36. 9.Ed.3.41. 4.Aſſ.pla.3. Lib.Int.406. Fitz.Nat.Bre. 184. Regiſter.197. 199. Lib.Int.427.

The remedies for oppreſſion by Nuſances.

bitant: In which foreſaid caſes the parties grieued by the ſaid Nuſances, and oppreſſions, may in ſome caſes haue their remedies by Aſſiſe of Nuſance brought in the Common Pleas, in ſome other caſes, by writs of Nuſance called Vicountiels, tryed in the Countie before the Shirife, in ſome other caſes, by the writ of Quod permittat, in ſome other caſes by action vpon the caſe: and in moſt of the ſaid caſes, the ſaid parties grieued by the ſaid Nuſances, may take away, pull downe, and remoue the ſame Nuſances, as their ſeuerall eſtates will enable them, or their ſeuerall caſes doe require. Co.lib.5.101.

Oppreſſion by Reſcous.

6 Euerie Reſcous that is vnlawfully made of cattell or other goods diſtrained, is an oppreſſion; for the offendor doth a wrong of his owne authoritie, to the preiudice of an other, in contempt of the iuſtice of the Realme, without any warrant or colour of law: Seeing when the partie grieued by himſelfe, or ſome other, doth diſtraine within his fee, for his rent or ſeruices behind, for dammages which he hath ſuſtained, for amerciaments, a rent charge, or for ſome other cauſe which he taketh to be lawfull, the cattell or other goods of him who he doth conceiue detaineth his due rent, or ſeruice from him, or whoſe cattell haue eaten or ſpoyled his corn, or graſſe, or otherwiſe haue treſpaſſed in his ground, and doth in quiet and peaceable manner driue them towards the pownd, there to remaine as a pledge ſub cuſtodia legis, vntill the law hath decided whether there was iuſt cauſe of diſtreſſe, or not, the owner of the ſame cattell, or ſome other in his behalfe, will by force and ſtrong hand, make Reſcous of this cattel, and take them from him who diſtrayned them, and ſo will not ſubmit himſelfe to the cenſure of the law, nor tarrie vntill it be diſcuſſed by the ordinary courſe of iuſtice, whether the party that diſtrained had lawfull cauſe ſo to do or not, but will be his owne Iudge, and take the authoritie of reuenge to himſelfe: which is an oppreſſion of him whoſe rent or ſeruices were due, and vnpaid, or whoſe corne or graſſe was eaten, &c. and who was alſo forcibly depriued of the ordinary remedy which the law did aſſign him for the recouery of his own duety. And moreouer it is a contempt of the law which the ſame offendor doth refuſe to be iudged by: and therefore in this caſe the party grieued may purſue againſt the offendor a writ of Reſcous, for this reſcous made, and oppreſſion done vnto him, and thereby recouer his dammages: and alſo the King ſhall haue a fine of him, for this contempt of his law, and his peace broken, and the offendor ſhall be impryſoned vntill hee hath paid the ſame. 44.Ed.3.20. 40.Ed.3.32. 17.E.3.43. 10.Ed.3.30. 2.H.4.15. 7.H 6.1. 22.H.6.54. Fitz.Na.Br. 101. Lib.Int. 327.

Oppreſſion by incrochments.

7 Euery Encrochment which one perſon doth make vpon anothers land, ground couered with water, rent, or ſeruice, is alſo an Oppreſſion: for they be done and put in practize by the offendors own open, plaine, & manifeſt wrong, without any warrant or colour of the law. As, it is an oppreſſion for one perſon by ploughing, eyzing, ditching, hedging, remouing of Pereſtones or land markes, to get away the ground or ſoyle of an other: and ſo it is for one perſon to draw away or alter an auncient Riuer, Broke, or Streame of an other perſons out of the old and wonted courſe: And ſo it is, if there be lord and tenant, and the tenant doth hold his land of his lord by fealty & fiue ſhillings of yearely rent, and of late yeares the lord hath had ſeiſin of more rent of the tenant by the tenants owne payment without cohertion of Diſtreſſe, if in this caſe the lord will diſtraine his tenants cattell for that ſurpluſage of rent, that is an oppreſſion, and for the redreſſe thereof the ſame tenant may purſue againſt his lord a Writ of Ne iniuſte vexes, grounded vpon a branch of the ſtatute of Magna Charta, thereby commaunding the Lord, that he ſhall not oppreſſe 22.Aſſ.pl.93. Sta.9.H.3.10

pꝛeſſe noꝛ vniuſtly vexe his tenant foꝛ moꝛe rent oꝛ ſeruices then he ought to pay oꝛ doe: Oꝛ otherwiſe the tenant may auoid this ſurpluſage of rent in an Aſſiſe, Writ of Reſcous, oꝛ Ceſſauit bꝛought againſt him by his loꝛd: but in a Repleuin he cannnot auoid his Loꝛd of this rent newly incroched, ſeing the ſame loꝛd hath had ſeiſin thereof: and ſo it is, if the loꝛd of a Manoꝛ, which is auntient demeſne, will encroch vpon his tenants, and diſtrain them oꝛ any of them that hold their lands by Charter freely, to doe other ſeruices oꝛ cuſtomes to the ſame loꝛd then they ought to doe, oꝛ that their auncеſtoꝛs were accuſtomed to do, this is an oppꝛeſſion of the ſame tenants: and foꝛ the redꝛeſſe thereof, all the tenants of the ſaid auntient demeſne Manoꝛ may haue againſt their ſaid loꝛd the kings Writ of Monſtrauerunt directed to the ſaid loꝛd, commaunding him thereby, that he ſhall not require noꝛ cauſe to be required of his ſaid tenants moꝛe ſeruices oꝛ cuſtoms then they ought to doe, oꝛ had wont do doe. And if after the ſaid Writ directed, he will diſtraine the goods of them oꝛ any of them againe, to doe moꝛe ſeruices then they ought to doe: Then the ſame tenants, oꝛ ſuch oꝛ ſo many of them as be ſo diſtrained may pꝛocure an attachment againſt their ſaid loꝛd, returnable in the K. Bench oꝛ common place, foꝛ this oppꝛeſſion and contempt, wherein euery of the ſame tenants ſhall recouer his dammages ſeuerally, accoꝛding to his loſſe.

22. Ed. 4. 7. 21 Aſſ. p. 33. 5. Ed. 4. 8. 40. Ed. 3. 44. 49. Ed. 3. 22. 39. Ed. 3. 6. Fitz. Na. Br. 24. Fitz. Nat. Bre. 25.

8 Euery exceſſiue amerciament which one perſon doth take of another, is alſo to be accounted an oppꝛeſſion of the party ſo amerced: foꝛ by the Statutes of Magna charta, & Weſtm 1. it is oꝛdained, That no City, Boꝛough, Towne, oꝛ man ſhal be amerced but foꝛ a reaſonable cauſe, and accoꝛding to the quantity of his offence: and euery freeman ſhal be amerced ſauing his freehold, a marchant ſauing his marchandize, & euery other mans villaine (beſides the kings) ſauing his villaine tenure: and the ſame amerciaments ſhall be aſſeſſed by the oath of honeſt and lawfull men of the ſame vicinage. So that if one perſon doe take a much greater amerciament of an other then the quantity of his offence doth require in a Court Baron, oꝛ other Court which is not of recoꝛd, oꝛ doe take that amerciament of his own authoꝛitie, without being befoꝛe aſſeſſed by others vpon their oaths, and ſo maketh himſelfe iudge in his owne cauſe, this is an oppꝛeſſion of the party amerced: foꝛ the redꝛeſſe whereof the party grieued may pꝛocure to be directed to the loꝛd of the ſaid Manoꝛ, oꝛ to his Baylife, a Writ of Moderata miſericordia (which was founded vpon the ſaid ſtat. of Magna Charta) commaunding them thereby, that they ſhall take a moderate and indifferent amerciament of the ſame perſon, accoꝛding to the quantity of his offence. And if the loꝛd oꝛ his baylifs will not then ceaſe to diſtraine foꝛ the ſaid exceſſiue amerciament, the partie ſo oppꝛeſſed may haue againſt the offendoꝛ an attachment, directed to the Shirife of that Countie where the ſame Diſtreſſe is taken, to attach him to appeare in the kings Court, and to anſwere his ſaid offence.

Oppꝛeſſion by exceſſiue amerciament.

Sta. 9. H. 3. 14. 3. Ed. 1. 6. Fitz Nat. Bre. 75.

9 The Waſt and Eſtrepement which one perſon haning a particuler eſtate in an other perſons land, doth make oꝛ commit to the diſheritance of him in the reuerſion oꝛ remainder of the ſame land, without his conſent, may alſo be accounted an oppꝛeſſion of him in whom the ſaid inheritance is: foꝛ when one perſon doth leaſe, oꝛ otherwiſe conuey his land to another, foꝛ the terme of life, liues, oꝛ yeares, he doth in effect but lend the ſame land to the ſaid particular tenant foꝛ the terme betweene them agreed vpon, expecting to haue the ſame againe at the end of the terme, in as good plight, & in ſuch foꝛt, as it was when

Oppꝛeſſion by committing of waſt.

he firſt did deliuer and lend it. And therefore if the particular tenant, during the continuance of his eſtate, do commit any waſt in the ſame land, he cannot deliuer it againe at the end of his terme in ſuch plight & ſort, as at the firſt he did receiue and borrow it: but by the waſt the perpetuall profit of the land is impaired, and therefore of ſo much in value, he in the reuerſion or remainder is diſherited. And for the preuention thereof, by the ſtat. of Marlebridge it was ordained, That Farmors during their termes ſhall not make waſt, ſale, or exile of houſes, woods, or men, nor of any thing belonging to the tenemẽts which they haue in farme, without they haue ſpeciall grant in writing, making mention of a couenant, that they may doe it. And to the intent that condigne puniſhment might be prouided & inflicted vpon ſuch as ſhould be tranſgreſſors & oppreſſors in theſe caſes of Waſt, by the ſtatute of Glouceſter it was enacted, That a man ſhal haue an action of Waſt in the Chauncery againſt him which is tenant by the courteſie of England, or otherwiſe tenant for terme of life, or for terme of yeares, or againſt a woman which holdeth in Dower: & he which ſhall be attainted of Waſt, ſhall forfeit the thing waſted, and beſides ſhall pay treble ſo much as the Waſt ſhall be tared: and after by the ſtatute of Weſtminſter the ſecond, the ſame was in a ſort confirmed, & the ſaid action of Waſt was againe giuen againſt the foreſaid tenants by the courteſie, in dower, for terme of life, or yeares, and alſo ordained to extend againſt Gardens. And by the ſame ſtatute, the proces to be vſed in the ſaid action of Waſt was aſſigned to be Summons, Attachment, and Diſtreſſe, and if the party defendant do not appeare at the diſtreſſe, then a writ ſhall be awarded to the Shirife, to inquire of the waſt by the oathes of twelue men. And becauſe diuers perſons did let their lands to others, ſometime for terme of life, or anothers life, and ſometime for terme of yeares, and after the ſaid tenants did graunt their eſtates which they had in the ſame lands and tenements to others, to the intent that they in the reuerſion, viz. their leſſors, their heires or aſſignées ſhould not take knowledge of their names, and yet the firſt leſſées did continually occupie the ſaid lands, and take the profits to their owne vſe, & in the ſaid lands & tenements did commit waſt & deſtruction to the diſinheritance of them in the reuerſion. For the reſtraint and puniſhment of which ſaid offence, being both an oppreſſion, and alſo a fraud and deceit, by a ſtatute made Añ 11. H. 6. it was ordayned, That they in the reuerſion in ſuch caſe may haue and maintaine a writ of Waſt againſt the ſaid Tenants for terme of life, anothers life, or for yeares, and ſo recouer againſt them the place waſted, and their treble dammages, for the waſt ſo by them done, as they ought to haue done for the waſt done by them, before the ſaid Graunt and Leaſe of their eſtate. Prouided, That this Ordinance ſhall not hold place, but where the firſt Tenants, before the graunt and leaſe of their eſtates in the manner and forme aboueſaid, were puniſhable of waſt: and alſo, where after the ſaid graunt and leaſe the ſaid firſt Tenants of the ſaid Lands and tenements do take the profits at the time of the waſt done to their owne proper vſe. And though the words of the ſaid Statute doe giue an action of Waſt in the caſe aforeſaid, but onely to him in the reuerſion, yet he in the remainder alſo (being in the like miſchiefe) ſhall or may take the benefit thereof, and maintaine an action of Waſt in this caſe againſt his particular Tenaunt for life, or yeares, if eyther of them doe commit waſt to his diſheritance. And whatſoeuer the intent of the Graunter is, in the caſe aforeſaid, yet if the Graunte doe aſſigne his Leaſe, take the profits thereof, and commit Waſt, he is puniſhable according to the ſaid Statute, for his intent ſhall not be eſtuable, nam exitus acta probat, viz. the taking of the profits doe ſuffici-

The tenants for. which committeth waſt.

A termor alieneth his eſtate, occupieth the land, and committeth waſt.

St. 52. H. 3. 24

St. 6. Ed. 1. 5.

St. 13. E. 1. 14

St. 11. H. 6. 5. Fitz. N. B. 59.

Co. lib. 5. 37.

ſufficiently expreſſe his intent: and euery aſſignée of the firſt Tenant, mediat or immediat, is within the compaſſe of this Statute: for the Statute was made to ſuppreſſe Fraud, Waſt and Oppreſſion. And ſo was the Statute of Weſtminſter the ſecond, being made and prouided to reſtrain Waſt and Oppreſſion committed by one Tenant in common to the preiudice and diſheri-

Waſt committed by a tenant in common.

St. 13. E. 1. 22 tance of an other: by which it was ordayned, That whereas two or more doe hold Wood, Turbarie, Fiſhing or ſuch like things in common, wherein none knoweth his owne ſeuerall, and one of them doth commit Waſt againſt the will of the other, an action of Waſt may lye: and when it is come vnto iudgement, the defendant ſhall chuſe eyther to take his part in a place certaine, by the aſſignement of the Sherife, and by the view and oath of his neyghbors ſworne and tryed for the ſame intent, or elſe he ſhall graunt to take nothing from thenceforth in the ſame Wood, Turbarie, and ſuch other, but as his partners will take: And if he doe chuſe to take his part in a place certaine, the place waſted ſhall be aſſigned for his part, according as it was before he committed the Waſt. And becauſe the before rehearſed Statute of Marlebridge doth expreſſe in generall termes, in what thinges waſt may be committed, as in Houſes, Woods, and Pen: and the words of the writ of Waſt in the Regiſter be, Quare fecit vaſtum, venditionem, ſeu deſtructionem de terris, domibus, boſcis, & gardinis: and the foreſaid Statutes of Anno 6. Ed. 1. 13. Ed. 1. and 11. H. 6. do declare, who are forbidden to do that waſt: And ſeeing waſt in lands, houſes, woods, or &c. is a great wrong and oppreſſion to him or them in reuerſion or remainder of the ſame, therefore I will ſomewhat particularly explaine, which the Law doth conſtrue and expound to be Waſtes, prohibited and puniſhable by the foreſaid Statutes, or either of them, to the intent, that both he that hath the inheritance, and alſo the particular Tenant, may know what is due to either of them, in reſpect of their ſeuerall eſtates, and what to take, and what to leaue. And to begin with the words of the writ touching waſt in land: If one perſon doe demiſe

3. E. 1. Waſt. 25.
50. Ed. 3. 3.

Waſt in land.

22. H. 6. 18.
2. H. 7. 14.
17 Ed. 3. 7.
9. Ed. 4. 35.
Co. li. 5. 11.
Fitz. Nat. Bre. 149.
Lib. Int. 6. 16.

or conuey to an other for the terme of yeares, life, or &c. land, where there is included in the bowels of the earth Tinne, Iron, Lead, Coale, Stone, Grauell, Marler, Sand, Chalke, or Marle, if the Pyne or pit thereof be not open, when the Leſſées eſtate or terme doth begin, the ſaid Tenant may not open the ground, make a new Pyne, and take the ſame Coale, Stone, Grauell, or &c. for if he doe, it is Waſt of the land, and he in the reuerſion or remainder may puniſh him therefore by an action of Waſt: For whereas there was aſſured to the Tenant but Veſturam terræ, and the annuall profit of the land, he hath digged and carried away the land it ſelfe, and impaired the inheritance thereof for euer. But if there be a Pyne or Pit open in any part of the ground ſo demiſed or aſſured, at the time of the Leaſe or aſſurance thereof, or at the time when the eſtate of the Tenant did begin, then the Tenant may digge there, and take and carry away ſo much of the Coale, Stone, Grauell, as ſhall be neceſſarily vſed or imployed, for or towards the repaire or maintenance of the houſe, land, or other commodities therewith demiſed, and it is no waſt. But if he do giue, ſell, or otherwiſe diſpoſe the ſame to any other perſon, place, or vſe (ſauing as is aforeſaid) then for ſo much as he ſhall ſo miſ-imploy, it is waſt. If one perſon do leaſe or aſſure his land to an other, and all the Pynes or Pits therein, for yeares, life, or &c. the leſſée may open and digge the ground for Coale, Marler, Stone, &c. and take and carry away the ſame, though there was not any Pyne open at the time of the leaſe or eſtate made: For by the aſſurance it doth appeare, that

41. E. 3. Waſt. 82.

Co. li. 5. 11.

the Leſſor was contented that waſt ſhould be made in any part of the ground leaſed, by myning or digging: and in this caſe the leſſee may ſell or otherwiſe diſpoſe the ſame Coale, Stone, Marle, or &c. at his pleaſure, for it is as much as if the leaſe or aſſurance had béene made to the Tenant, without impeachment of any manner of Waſt to be committed by Mynes, Pits, or diggings. If the Tenant for yeares, life, or &c. doe eyze, plough vp, and conuert into Tillage or Wood ground an auntient and vſuall mowen Peddow, it is Waſt: and ſo it is, if he doe drowne or ſuffer to be drowned continually a Peddow or other ground demiſed: for it is not lawfull for a particular Tenant to conuert ground to any other vſe then he receiued it, as to turne Peddow into arable, arable into Wood, Wood into Paſture or Peddow, arable or Wood into Poles or Ponds, for thereby he doth wrong to the inheritance for his own profit. And likewiſe it is waſt if the tenant do ſuffer the Bankes of the Sea or of a Riuer to be vſually ouerflowne, and to decay, whereby a Peddow, a Paſture, or other ground which he holdeth for life or yeares, that before was fruitfull, ſhall become ruſhie, ſedgie, or otherwiſe barren. But if he ſuffer ground ſet with Saffron to decay, or Land, Peddow, or Paſture to grow full of Buſhes or Thornes, or to lye freſh, and not manured, it is no Waſt, but euill huſbandrie. If the owner of a Pole or Pond ſtored with fiſh, doe aſſure the ſame for yeares, life, or &c. and the tenant letteth forth the water, or otherwiſe fiſheth the ſame, and taketh forth the fiſh, or part thereof, and yet leaueth it as ſufficiently ſtored at the end of his terme, as at the beginning thereof he found it, this is no Waſt. But if he doe let forth the water of the ſaid pole, or &c. and ſuffer the ſame to lye continually dry, or doe deſtroy by other meanes the fiſh therein, and doe not repaire it, and leaue it as well and ſufficiently ſtored with fiſh, as he recined it, by the view and iudgement of the countrey, then it is waſt, and he may be puniſhed therefore by an Action of Waſt. And the ſame law is, if one doe aſſure to an other for terme of yeares, or life, a Parke ſtored with Déere, and the tenant deſtroyeth all the Déere, and doth not ſtore the ſame againe with as many before the end of his terme, this is Waſt. If the tenant for terme of life, yeares, or &c. of a ſeuerall Paſture or Cloſe incloſed with a Wall, Pale, or Quick-ſet hedge, doe ſuffer the ſame to decay, it is waſt: for by the decay of the Wall, Pale, or Quick-ſet hedge, he hath made it no paſture, but layed it in common. As concerning waſt in houſes, it is waſt, and an oppreſſion of him or them in reuerſion or remainder, if the tenant for terme of yeares, life, or &c. do willingly pull downe or negligently ſuffer to decay a dwelling houſe, or any Hall, Parlour, Chamber, Buttery, Kitchin, Brew-houſe, Bake-houſe, Daie-houſe, Doue-houſe, Barne, Stable, Ore-houſe, Kill-houſe, Myll, Cottage, or any other Houſe, Cullice, Leantor, Edifice, or Building, being of the value of iij. ſhillings iiij. d. which being couered, and in good repaire, was ſtanding and being vpon the ground, when the ſame tenant did or lawfully might haue entred vpon the lands demiſed, in reſpect of his leaſe, or other eſtate to him aſſured thereof. And alſo it is waſt, if any of the particular tenants aforeſaid doe during his eſtate build any new Houſe, Flore, or Partition vpon any land demiſed or conueyed vnto him, and after he or his aſſignées doe pull downe the ſame againe, or ſuffer the ſame to fall into ruine and decay: for that the Houſe, Flore, or Partition being builded, was once parcell of the inheritance of the Leſſor, and therefore being againe pulled downe, or decayed, it is to his diſheritance. But if the Leſſor doe build a houſe vpon the ground ſo demiſed or aſſured, during

waſt in houſes.

7.Ed.3.Waſt 141.
5.R.2. Waſt 97.
Ed.1.Waſt. 128.
12 H.8.1.
14.Ed.3. Waſt 145.
3.H.6.53.
4.Ed.3. Waſt 22.
21.H 6.46.
38.hd .7.
46 hd 3. Waſt 90.
17 E.3.7.
42.Ed.3.22.
17.Ed 2. Waſt 118.
49.Ed.3.2.

15.H.3. Waſt 132.
46 Ed.3. Waſt 91.
29 H.8. Dyer 37.
20.H.6.1.
10.H.7.2. Fitz.Nat.Bre. 59.
2.H.6.10.

during the eſtate of the particular Tenant therein, and the Tenant doe pull it downe, or ſuffer it to decay, it is no Waſt, for it was not parcell of the thing demiſed, neither was there anie couenant in Law, that it ſhould be repaired. And it is Waſt, if anie of the houſes, edifices, or buildings aforeſaid be willingly or negligently burned, pulled or throwne downe by the Tenant thereof, or by anie of his familie, or neighbours, or by anie other perſon whatſoeuer (ſo that it be not by the kings enemies, Thunder, Lightening, extreame Wind, or Tempeſt, in which caſes it is no Waſt punishable by the Law, ſeeing they were burned or throwne downe by the power and hand of God.) But it is otherwiſe, if it be burned or ouerthrowne by rebels, or others, againſt whom the Tenant may haue his remedie and recompence by the Law: For in that caſe it is punishable by Action of Waſt, if it be not repaired againe within conuenient time. If a Tenant for life, yeares, or &c. doe ſuffer a pale or a wall of ſtone, bricke, timber, or mudde, which is couered with ſlate, tyle, timber, or thatch, to decay, or lie vncouered, it is Waſt: But if any houſe, pale, or wall were ruinous, or vncouered, at the time when the eſtate of the ſaid Tenant begunne, and after did decay and fall downe, then the Tenant is not chargeable therefore in an Action of Waſt, for he is bound to keepe them in none other repaire than hee found them. If the Tenaunt for yeares, or life, or &c. doe take away a partition, or a loft in a houſe, whereby hee doth make two chambers, or other two roomes, or more, but one, it is waſt: for the Tenant muſt maintaine the houſe, and leaue it in ſuch ſort as it was demiſed vnto him, and not tranſpoſe or alter anie part thereof otherwiſe than hee receiued it. And in like ſort it is Waſt, if the ſaid Tenant doe take away a Furnace, a Bench, a Table fixed in the ground, a Dore, or a Windowe from a houſe, which were there at the time when his eſtate beganne: for they be made parcell of the inheritaunce of the houſe, and were demiſed with it, and can not bee ſeuered from it, but by him who hath the inheritaunce thereof. And yet if the ſame were ſet there by the Termor, then he may take them away againe at anie time during his terme, but not after his terme expired. And it is waſt, if the Tenaunt doe take away the Glaſſe of the Windowes of a houſe: for whether the Leſſor or the Leſſee did ſet vp the ſame Glaſſe, and whether it bee ſet vp with nailes, lime, or otherwiſe, the Termor ought not to take it away, for without the Glaſſe it is not a perfect houſe. The ſame Lawe is of Wainſcot, whether it be affixed to the houſe by the Leſſor or by the Leſſee, or whether it be faſtned by great nailes or ſmall nailes, or by ſcrewes or yrons put through the poſts or walls, or by any other meanes, yet if it be taken away, it is waſt, and the Tenaunt of the houſe ſhall be puniſhed for it by Action of Waſt: for it is made parcell of the houſe, as ſeeling and plaſtering of a houſe is: For the ſaid Furnace, Bench, Table, Dore, Glaſſe, and Wainſcot are made parcell of the inheritaunce of the houſe, as the Walles, Beames, and Tranſomes be, and they ſhall diſcend to the heire of the houſe, and not accrue to the Executors: Neither ſhall they be forfeited by Vtlarie, nor attached in an Aſſiſe, as Chattels may. But if in anie of the caſes aforeſaid the Tenant doe repaire the houſe or thing waſted, and make it ſo long, ſo broad, ſo high, and in ſuch and ſo good ſort, as it was when his eſtate did beginne, before any action of waſt ſhall be brought againſt him therefore, then no Action of Waſt is maintenable againſt him for that cauſe. Notwithſtanding, if anie houſe, wall couered, or &c. were ruinous at the time of the beginning of the Tenants eſtate, and after the Tenant doe pull it downe, and build it againe, though it be not ſo large as it was before, yet is it no waſt, neither

19. Ed. 3. Waſt. 30
20. Ed 3 Waſt 32
44. Ed. 3. 34.
43 Ed. 3. 6.
28. H. 8. Dyer 33.
33. H. 6. 1.
44 Ed. 3. 44
20 H. 7. 5.
29. H. 8. Dyer 36.
21. H. 6. 2.
Fitz. N. B. 59
40. Aſſ. pla 22
20. H. 7. 5.
42. Ed. 3. 6.
21. H. 6. 26.
20. H. 7 13.
Co. lib. 4. 63.
20 H. 7. 13.
21. H 7. 26.
20 Ed 3. Waſt. 32.
22. H 6 58.
28 H. 6. 2.
38. Aſſ pla 1.
42 Ed. 3. 22
22. H. 6. 18
21. Ed. 4. 39

neither is the Tenant puniſhable therefore by an action of Waſt, for that hée had not béene puniſhable therefore, if hée had ſuffered it wholly to decay, and not haue builded againe any part thereof. If Waſt be committed in ſeuerall principall parts of a houſe, he in the reuerſion or remainder thereof may by an action of Waſt recouer the whole houſe for this diſperſed Waſt. As in like caſe, if Timber trées of Oake, Aſh, or Elme be felled in ſeuerall parts of a wood or cloſe, hée in the reuerſion or remainder may by an Action of Waſt recouer againſt the Tenant the whole wood or cloſe, for this diſperſed Waſt. No proceed, according to the words of the Writ, with waſt in woods: If the Leſſée for yeares, Leſſée for life, Tenant in Dower, or &c. do ſell or fell Oakes, Aſhes, or Elmes, being of twentie yeares growth, and aboue the valew of three ſhillings foure pence, this is waſt, and puniſhable by an Action of waſt: For thoſe trées, of that age, will endure long, be mét for building, and be parcell of the inheritaunce of him in the Reuerſion or Remainder, and notwithſtanding the ſaid Leaſe, or anie other particular eſtate for life aſſured, the ſame Trées hée the Leaſſors, and not the Leaſſées, though the Leaſſor cannot fell them, or graunt, or ſell them to anie other without conſent of the tenant, for that the ſaid Tenant hath the loppe and maſſe of them, and ſhade for his cattell. And likewiſe, if the boughes or braunches of anie of the ſame trées, being of the ſaid age of twentie yeares bée cut downe by the Tenant, the ſame is alſo waſt, for they in like ſort may ſerue for building. But if a houſe with certaine ground be aſſured to a Tenant for terme of yeares, life, or &c. whereupon Oake, Aſh, or Elme aboue twentie yeares of age be growing, if the ſame houſe doe fall in decay during the ſaid terme, the ſaid Tenant of his owne authoritie, without the aſſignement of the Leaſſor, may fell ſufficient of the ſaid Oake, Aſh, or Elme, to repaire the ſame houſe: for the Law hath ordained, That one commoditie or parcell of the Farme demiſed ſhall helpe to maintaine the other. And ſo the Tenant if hée will may fell Timber to repaire the houſe, though the ſame were in decaie at the time of his entrie: Notwithſtanding, if hée be ſo diſpoſed, hée may permit the ſame houſe which hée ſo found in decay, to be vtterly ruinated and fall downe; for hée néede not kéepe the houſe in other repaire than hée receiued it. But if the Tenaunt doe giue or ſell anie Timber, or fell more for anie of the vſes aforeſaid, than is neceſſarie and ſufficient, or doe fell anie Timber to build a new houſe, where there was none vpon the ground before, then hée may bée puniſhed therefore by an action of Waſt. And the ſame Law is of a Copieholder, who can fell no Timber but to repaire his houſes which hée holdeth by copie of Court Roll. The felling of Apples, Gallowes, Willowes, Hornebeams, Crabbe-trées, Haſills, Thornes, or ſuch like is no Waſt, for that they will not continue long, nor ſerue for building: And therefore they are accounted ſeaſonable wood, and are lawfully to be felled by the Termor, and to be ſpent vpon the ſame ground for houſe-bote, plough-bote, hedge-bote, fold-bote, or fire-bote, which the Lawe doth allow to the Termor for yeares or life. And the Tenant may fell Oakes, Aſhes, or Elmes for anie of the purpoſes aforeſaid, if there be no vnderwood growing vpon the ſame ground to bée imployed to thoſe vſes. By the cuſtome of ſome Countrey, where wood is plentifull, Oakes, Aſhes, and Elmes, vnder twentie yeares of growth be called Vnderwood, or ſeaſonable wood, and may be felled by the Termor for any of the vſes aforeſaid, and ſo may wrangles aboue twenty yeares growth, which are neuer like to proue Timber, or méete for building: but in ſome other Countries where wood is ſcant, it is otherwiſe. Felling of ſeaſonable

wood,

waſt in woods.

4.Ed.3.38
8.Ed.2. Waſt.112
12.Ed 3 Waſt.108. 127
Pl.Com 470.
3.E.6.Dier 65
7.H.6.40
21.H.6.46
14.H.4.12
27 H.6 Waſt 8
29.H.8 Dier 36
Co.lib.4.64
7.H.6.40
41.Ed.3 Waſt.82
12.H.8.1
7.H.6.40
29.H.8 Dyer 36
49.Ed.3.1
42.Ed.3.22
11.H.4.31
9.H.4 Waſt.59
9.H.6.66
46.Ed.3.17
12.H.8.1
21.H.6.46
11.H.6.1 Lib.Intr.617

40.Ed 3 25
Fitz.N.B.59

wood, which is vſed to be cut euerie ſeauen, tenne, fifteene, or twentie yeares, is no waſt: neither is it waſt for the tenant to fell and take botards, or to take windfalles wherein there is no timber; for they be the tenants to vſe and ſpend as is aforeſaid: But windfalles wherein there is any timber be the Leaſſors. And ſo is the timber of a houſe, which doth decay and fall downe during the terme, the Leaſſors, vnleſſe the tenant will reedifie the ſame houſe, and imploy the ſaid timber in the building thereof againe. Though the felling of Willowes, or other ſuch like ſeaſonable wood, bee of it ſelfe no waſt, yet if Willowes or any of the trees aforeſaid doe grow within the view or ſcite of a Manor houſe to defend the houſe from tempeſts and ſtormes, or neare vnto the Banke of a Riuer, to defend the Banke, then the felling of them is waſt: and the tenant of the land is puniſhable for the ſame by an Action of Waſt. If a tenant for yeares, life, or &c. doe fell Oakes, Aſhes, or Elmes, and after hee hath felled them, hee doth ſuffer cattell to come into the ſame ground, which do crop and ſpoile the ſprowts or new ſprings growing out of the rootes of the ſame trees, then this is a new and another waſt, and puniſhable by the ſame Action of Waſt that the trees be, or by another, in which Action he in the reuerſion or remainder ſhall recouer treble dammages: firſt for the trees felled, and alſo treble dammages for the ſprings ſpoiled, though he can but once recouer the place waſted. If the Termor doe fell greene wood to burne, where he hath dead wood ſufficient, it is Waſt. But the felling of dead wood which will beare no leaues in Summer is no waſt; neither is the pulling downe of a hedge Waſt, or of a Pale or Wall that is vncouered waſt.

40.Ed 3.15
12.H 8.1
20.H.7.5

20.Ed.3 Waſt.32
9.H.6.66
21.H.6.1.
22.H.6.12
4.H.3. Waſt.140

20.Ed.3 Waſt.32
7.H.6.40
22.H 6.24

And the foreſaid Writ of Waſt proceedeth further to puniſh Waſt in Gardens: Therefore if the Termor doe fell and deſtroie Appletrees or Peare-trees growing, diſperſed in ſeuerall places of the ground demiſed vnto him, it is no Waſt; for hee may fell them, and take them to burne as ſeaſonable wood: But if hee fell a whole Garden or Orchard of Appletrees or Peare-trees, or anie great number therein, it is Waſt; for the wordes of the writ of Waſt doe erpreſſe ſo much, which bee, Non liceat alicui vaſtum, vendicionem, ſeu deſtructionem facere in terris, domibus, Boſcis, ſeu Gardinis. And if anie Appletrees, or Peare trees bee thrown downe by the winde in an Orchard or Garden, and they doe leane vpon ſome of their boughes, and the ſpurres or rootes of them continuing faſt in the ground, do ſo cherish the trees that they do beare fruit, it is waſt to fell and carrie them away. And to make an end of this Branch with the words of the foreſaid ſtatute of Marlebridge, touching exile of men: If the tenant for yeares, life, or &c. of a Manor do ſo ver the villeins regardant of the ſame Manor by diſtreſſes, fines, amerciaments, or otherwiſe, that the ſame villeins do depart from their Tenements, this is to the diſheritance of him in the Reuerſion or Remainder, and therefore puniſhable by an action of Waſt. But if the Termor of a Manor during his eſtate do enfranchiſe a villeine regardant to a Manor, this is no waſt puniſhable by the Lawe; for after the particular eſtate ended, he in the reuerſion or remainder may ſeize the ſame villeine againe cum tota ſequela ſua. If the tenant for yeares, life, or &c. of a Manor or other land, wherein there be cottages, or ſmall Tenements, doe demiſe the ſame Cottages, or &c. to ſeuerall Tenants, and they do die of the plague, and the ſame Leaſſee can get none other tenants to inhabite the ſame Cottages or &c. whereby they doe decay, and fall downe, the Leaſſee is not puniſhable therefore by an Action of Waſt, for that the Waſt which enſued by the death of thoſe Cottes or inferiour Tenants came by the viſitation and hand of God, and not by anie default of the Termor, and

waſt in gardens.

waſt in men.

44.Ed 3.44

29.H 8 Dyer 37
Fitz.N.B.55
Fitz.Waſt. 2.113.118 130.131.
2.H.6.11

44.Ed 3.21
Fitz. Waſt. 164.105.

and therefore the ſaid Termor doing his endeuour to reforme the defect, and to prouide other tenants, and being not able to performe it, could not redreſſe the ſame.

10 When one perſon doth bargaine, couenant, or conclude with another for any payment, matter, cauſe, or thing to be performed, and is once fully ſatisfied thereof by money, wares, or other meanes, according to the true intent of the ſame agreement: if the ſame partie doe after ſue or attempt by courſe of Law to obtaine a new, or other ſatisfaction for the ſame contract, this is a plain and manifeſt wrong and oppreſſion, for the ſaid party doth in a ſort endeuor to be twice ſatisfied for one debt or dutie. And likewiſe it is an oppreſſion and wrong, if one perſon doe endeauour to lay a burden or charge vpon others, which the Lawe of the Realme will not impoſe vpon them, or which himſelfe alone, or himſelfe with others ought to ſuſtaine: or when one perſon ſhall impriſon or reſtraine an other of his libertie, who by Lawe ought to bee free. As if one perſon bee bound to an other by Statute marchant, or Statute Staple for the payment of a ſumme of money, whereof there is a defeaſance that if the Conuſor doe pay to the Conuſee a leſſe ſumme of money at a day preſixed, or diuerſe ſummes at ſeuerall daies, or doe performe certaine couenants or agréements in the ſaid defeaſaunce, or in certaine Indentures made betweene them ſpecified, and the Conuſor doth pay the ſaid ſumme or ſeuerall ſummes of money, or doth performe all the couenants in the ſaid Indenture ſpecified, according to the purport of the ſaid Defeaſaunce: and that notwithſtanding the Conuſee doth ſue Execution of the ſaid Statute againſt the Conuſor, this is a manifeſt wrong and oppreſſion pretended to the Conuſor: Wherefore the Conuſor for his releefe may haue an Audita querela directed out of the Chauncerie to the Juſtices of the Kings Bench, or Common Place, comprehending the whole matter, and charging them to call before them the parties, Plaintife and Defendant, and to doe them iuſtice, according to the Lawe and Cuſtome of the Realme, which is either to graunt a Superſedeas to ſtaie the Execution, or to ſet the bodie of the Conuſor at libertie, if hee be taken and impriſoned therefore, and to diſcharge his lands and goodes of Execution, if the ſuggeſtion of the Plaintife in the ſaid Writ bee proued to bee true. And if the Conuſee in the caſe aforeſaid doe take away the Defeaſance or Indenture from the Conuſor, and after extend the ſame Statute againſt him, this is likewiſe an oppreſſion, and to be redreſſed by an Audita querela. And in like ſort if the Conuſee after the ſaid ſtatute acknowledged, doe make a releaſe or acquitance of the ſame to the Conuſor, and then doe ſue execution of the ſaid ſtatute againſt the ſame Conuſor, or anie feoffee of anie part of his land, this is a great iniurie and oppreſſion, and therefore in this caſe the ſaid Conuſor or his feoffee is to be relieued by an Audita querela. If a ſtatute be made and acknowledged by one perſon to another, and then committed in ouell maine to a ſtranger to be deliuered to the Conuſee vpon certaine conditions performed, and after the ſame ſtranger doe deliuer the ſaid ſtatute to the Conuſee before the conditions performed, whereupon hee doth ſue execution thereof againſt the Conuſor, this is a great wrong and oppreſſion of the Conuſor, and therefore he may haue an Audita querela vpon this matter in fact, ſtaie the execution, and thereby redreſſe this iniury. If one perſon be bound to an other by Statute or Recogniſance for the payment of a ſumme of money, and after the Conuſor doth make ſeuerall feoffements of ſeuerall parcels of his land to diuerſe perſons, and then the Statute

Oppreſſions redreſſed by an Audita querela.

46.Ed.3.4
47.Ed.3.26
20.Ed.3
Fi.N.B.105

47.Ed.3.26
Fit.N.B.103

47.Ed.3.3
45.Ed.3.17
3.H.4.12
31.Ed.3

12.H.4.13
43.Ed 3.17

45 Ed.3.17
47.Ed 3.3
9.H.4.5

13.H.7.22 16.El.Dyer 332. tute or Recogniſance is forfeited, and the Conuſée doth ſue execution thereof againſt one of thoſe feoffées onely, this is a wrong and oppreſſion of him, for that all the land of the conuſor which he had at the time of the ſaid ſtatute or recogniſance acknowledged, or at any time after, ought to be charged and extended for the paiment of this debt, to the intent the mony might be the ſoner paid, and the execution more ſpeedily diſcharged: and therefore the ſame feoffée, whoſe land is ſo extended may haue an Audita querela, or a Scire facias, as the caſe requireth, to defeat the execution againſt him (and thereby he ſhall be reſtored to all the meane profits) and to compell the conuſée to ſue execution of al the land which was the conuſors at the time of the ſaid ſtatute or recogniſance acknowledged, or at any time after; and ſo the land of euery terre-tenant ſhal be equally charged, and each perſon contributorie to the ſame extent, in reſpect of his land. If the conuſor after a ſtatute or recogniſance acknowledged doe make many feoffements of ſeuerall parcels of his land to diuers perſons, and then all, or any of thoſe feoffées lands be extended by force of the ſame ſtatute &c. the partie or parties grieued by the ſame extent, may procure an Audita querela to cauſe the lands of the conuſor to be likewiſe extended: for he or they be wronged and oppreſſed by the ſaid conuſors former Act and means. But on the other ſide, if the land remaining in the hands of the conuſor be extended by the conuſée, by force of the ſaid ſtatute or recogniſance, the conuſor cannot maintain an Audita querela againſt his feoffées, or any of them, to cauſe their lands to be extended: for he is not vexed or oppreſſed by the ſame extent by any of their meanes, nor for any of their debts, but for his owne debt, though in the caſe before rehearſed they be troubled and oppreſſed for his debt: for when anie perſon doth become bound by Statute or Recogniſance to an other, and after alieneth his land, or any part thereof to a ſtranger, the bodie of the conuſor remaineth debtor to the conuſée in reſpect of his acknowledgement and confeſſion of the ſame, made of record before a competent Iudge or Officer thereunto lawfully aſſigned, and the debt is his, and the burden thereof is his, and the land is onelie chargeable in reſpect that it was in his hands at the time of the Statute or Recogniſance acknowledged, or after, and the conuſors perſon, and the land in his hands is onelie chargeable in that caſe. As in like caſe, if a man doe become bound by Statute or Recogniſaunce to another, and after the Conuſée doth purchaſe parcell of the land of the Conuſor, and then the Statute is forfeited, the Conuſée may extend the Statute, take and impriſon the bodie of the Conuſor, and haue the reſidue of his land deliuered to him in execution, and the Conuſor ſhall haue no remedie by Audita querela againſt the Conuſée, for that the Conuſor is not wronged or oppreſſed by this extent, ſeeing hée himſelfe is the onely debtor of the Conuſée, and his bodie, lands, and goodes are lyable to the payment of this debt, and not the lands in the hands of the Conuſée. And ſo it is if a man bée bound by Statute or Recogniſaunce to another, and after the Conuſée doe purchaſe parcell of the land of the Conuſor, and a ſtranger purchaſeth an other parcell of land of him, and then the Statute is forfeited, and the Conuſée doth ſue execution of the land of that ſtraunger the other purchaſer: that is a wrong and oppreſſion, and therefore the ſaid ſtranger may ſue an Audita querela againſt the ſaid Conuſée, and thereby diſcharge his land of execution: for that the ſaid Conuſée hath diſcharged this land by his owne Act, that is, by purchaſing of parcell of the land charged: for by the Statute or Recogniſance acknowledged, the whole land was charged, and by purchaſing of parcell by the Conuſée, hée hath diſcharged the whole, ſa-

Co. lib 3. 14. 23.Ed 3 Execution 127

9.H.4.5

23.Ed 3 Fitz. Execution 127. 45.Ed.3.22

11.H.7.4 13.H.7.22 45.Ed.3.22 2.El.Dier 193 Pla. Com. 72

11.H.7.4 13.H.7.22 Fit.N.B. 105

uing

uing that which remaineth in the hands of the Conuſor. If an Infant within the age of one and twenty yeares be bound by Statute or Recogniſaunce, and the Conuſor will extend the ſame, the Infant may purſue an Audita querela to auoid the ſame, either during his minoritie, if by inſpection the Court ſhall adiudge him within age, or after he ſhall accompliſh his full age: for it was a wrong and oppreſſion practiſed by the Conuſee to abuſe the tender age of the Infant, and to vrge a Statute of him before the Law did enable him to acknowledge it. And the like Law is, if one perſon will acknowledge to another a Statute by dureſſe of impriſonment, and then the Conuſee do ſue execution of the ſame, the Conuſor may proſecute an Audita querela and auoid the Statute, for in this caſe the Conuſee hath done to the Conuſor a double wrong and oppreſſion: viz. firſt to impriſon him, and thereby to eract a Statute of him, and then contrary to the warrant of the Law to extend the ſame againſt him. And as in the caſes aforeſaid, ſo likewiſe in al other caſes where any perſon hath iuſt and lawfull cauſe to ſeeke and haue releeſe by an Audita querela, in the ſame caſes either he is, or is offered to be oppreſſed and wronged: And in all the ſame caſes the oppreſſor endeuoreth to make the Law his colour and inſtrument to abuſe him.

6. Ed. 3. 39
13. Ed. 3. Aud quer. 26
Fi. N. B. 104.
Fi. N. B. 104
20. Ed. 3. Aud quer. 27

11 Foreſtallers, Ingroſſers, & Regrators deſerue to be reckoned amongeſt the number of Oppreſſors of the common good, and publike wealth of the Realm, for they do endeuor to inrich themſelues by the impoueriſhment of others, and reſpect not how many do loſe, ſo they may gaine. They haue been exclaimed vpon, and condemned in Parliament from one generation to another, as appeareth by the ſtatutes of Anno 51. H. 3. Anno 34. Ed. 1. Anno 25. Ed. 3. Anno 27. Ed. 3. Anno 28. Ed. 3. Anno 31. Ed. 3. Anno 42. Ed. 3. Anno 2. R. 2. Anno 6. R. 2. Anno 14. R. 2. Anno 25. H. 8. Anno 5. Ed. 6. & Anñ 5. El. but amongſt the others, ſpecially foreſtallers, for by the foreſaid Statute of Anñ 34. Ed. 1. it was ordained, That no foreſtaller ſhal be ſuffred to dwell in any towne: for he is a manifeſt oppreſſor of the poore, and a decaier of the rich, a publike enemy of the country, a Canker, a Moth, and a gnawing worme that daily waſteth the common wealth: And the act and name of a Foreſtaller was ſo odious in that time, that it was moued in Parliament to haue had it eſtabliſhed by Law, That a Foreſtaller ſhould be baited out of the towne where he dwelt by dogs, and whipped forth with whips. But becauſe in time it grew in queſtion, who was to be accounted a Foreſtaller, who an Ingroſſer, and who a Regrator, and what puniſhment former Laws had inflicted vpon them; therefore to the intent that they and their offences might more certainely be laied open to the knowledge of the whole realme, and condigne puniſhment prouided for them, by a ſtatute made Anno 5. & 6. Ed. 6. it was eſtabliſhed, That whatſoeuer perſon or perſons ſhall buy or cauſe to be bought any marchandiſe, victuall, or other thing comming by land or water towards any faire, or market, to be ſold in the ſame, or comming toward anie citie, port, hauen, creek, or rode of this realm, or Wales, from any part beyond the ſea to be ſold: or make any bargaine, contract, or promiſe for the hauing or buying of the ſame, or any part thereof ſo comming as aforeſaid, before the ſame marchandiſe, victuals, or other things ſhall be in the market, faire, citie, port, hauen, creeke, or rode, ready to be ſold: Or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon or perſons for the inhanſing of the price, or deare ſelling of anie of the things aboue mentioned: Or elſe diſſwade, moue, or ſtirre any perſon comming to the market or faire, to forbeare

Stat. 34. Ed. 1
Stat. 5. & 6. Ed. 6. 14.

A Oppreſſion by foreſtalers, ingroſſers, regrators.

Who is a foreſtaller.

ſo̱beare to bring any of the things aboue mentioned to any Faire o̱r market, citty, po̱rt, &c. to be ſold as afo̱reſaid, ſhalbe adiudged a fo̱reſtaller. But by the
23.13.El.25. ſtatute of an̄ 13. El. it is o̱rdained, That the ſaid Stat. of An̄ 5. & 6. Ed. 6. ſhall not extend to any wines, oyles, ſugars, ſpices, currans, o̱r other fo̱raine victuals, bro̱ught from beyond the ſea (fiſh and ſalt onely except.)

B

Who is a regrato̱r.

23.5. & 6. Ed. 6.14. Whatſoeuer perſon o̱r perſons ſhall by any meanes regrate, obtaine, o̱r get into his o̱r their hands, o̱r poſſeſſion, in any faire o̱r market, any co̱rne, wine, fiſh, butter, cheeſe, candles, tallow, ſheepe, lambes, calues, ſwine, pigges, geeſe, capons, hennes, chickins, pigeons, conies, o̱r other dead victuall whatſoeuer, that ſhalbe bro̱ught to any faire o̱r market within this realm, o̱r Wales, to be ſold, and doe ſell the ſame againe in any faire o̱r market holden o̱r kept in the ſame place, o̱r in any other faire o̱r market within fifty. miles thereof, ſhalbe reputed and taken fo̱r a regrato̱r, o̱r regrato̱rs.

C

Who is an ingroſſer.

23.5. & 6. Ed. 6.14. Whatſoeuer perſon o̱r perſons that ſhall ingroſſe, o̱r get into his o̱r their hands by buying, contracting, o̱r promiſe taking, (other than by demiſe, grant, o̱r leaſe of land o̱r tythe) any co̱rne growing in the fields, o̱r any other co̱rne o̱r graine, butter, cheeſe, fiſh, o̱r other dead victuals whatſoeuer, within the realm of England, to the intent to ſell the ſame againe, ſhalbe reputed and taken an vnlawfull engroſſer o̱r engroſſers.

D

The puniſhment of fo̱reſtallers, regrato̱rs, and ingroſſers.

23.5. & 6. Ed. 6.14. If any perſon o̱r perſons ſhall offend in any of the things befo̱re recited, and being thereof duely conuicted o̱r attainted by the lawes of this realme, o̱r after the fo̱rme hereafter mentioned, he o̱r they ſhall fo̱r his o̱r their firſt offence, haue o̱r ſuffer impriſonment by the ſpace of two moneths without baile o̱r mainprize, and ſhall alſo loſe and fo̱rfeit the value of the goods, cattels, and victuall, ſo by him o̱r them bought o̱r had. And if any perſon lawfully conuicted o̱r attainted, of o̱r fo̱r any the offences aboueſaid, be thereof eftſoones lawfully conuicted o̱r attainted, then euery perſon o̱r perſons ſo offending, ſhall haue & ſuffer fo̱r his ſaid ſecond offence, impriſonment by the ſpace of one halfe yeare, without baile o̱r mainprize, and ſhal loſe the double value of all the goods, cattels, and victuall, ſo by him bought o̱r had as is afo̱reſaid. And if any perſon being lawfully twice conuicted o̱r attainted, of o̱r fo̱r any of the ſaid offences, ſhal eftſoones offend the third time, and be thereof lawfully conuicted o̱r attainted, then euery ſuch perſon fo̱r the third offence ſhalbe ſet on the pillo̱rie in the citty, towne, o̱r place where he ſhall then dwell, and inhabit, and loſe and fo̱rfeit all the goods and cattel, that he o̱r they haue to their owne vſe, and alſo be committed to pri ſon, there to remaine during the Kings pleaſure.

E

Cases where in regrating o̱r ingroſſing be tollerable.

23.5. & 6. Ed. 6.14. Prouided alwaies, that the buying of any ſuch barley, bigge, o̱r oates, as any perſon o̱r perſons (not fo̱reſtalling) ſhall conuert into mault, o̱r oatmeale, in his o̱r their owne houſe o̱r houſes, o̱r ſhall ſo be conuerted indeed: o̱r the buying of any ſuch thing, by any ſuch Fiſhmonger, Butcher, o̱r Poulter, as concerne his o̱r their owne faculty, craft, o̱r miſtery (otherwiſe than by fo̱reſtalling) which ſhall ſell the ſame againe vpon reaſonable prices by retaile: o̱r the taking of any cattell, co̱rne, graine, butter, cheeſe, o̱r any other thing aboue mentioned, reſerued (without fraud o̱r couin) vpon any leaſe fo̱r terme of life o̱r liues, yeare, o̱r yeares, heretofo̱re made, o̱r hereafter to be made: o̱r the buying of any wine o̱r other dead victuall aboue mentioned, being apt and meete fo̱r mans ſuſtenance by any Inholder o̱r other victualler, to ſell the ſame by

retaile within his houſe, or to any of his neighbours for their ſuſtenance, for reaſonable prices: or the buying of any dried or ſalted fiſh, herring, or ſprats (not foreſtalled) and ſolde for reaſonable prices: or the buying of any corne, fiſh, butter, or cheeſe, by any ſuch Badger, lader, kidder, or carrier as ſhall be aſſigned, and allowed to that office or doing by three Juſtices of Peace of the County where the ſaid badger, lader, kidder, or carier ſhall dwell, which ſhall ſell and deliuer in open faire or market, or to any other victualler, or to any other perſon or perſons for the prouiſion of his or their houſe or houſes, all ſuch corne, graine, butter and cheeſe, as any ſuch perſon ſhall bury or cauſe to bee bought (and that within one moneth next after he ſhall ſo buy any ſuch corne, graine, butter or cheeſe) ſo that the ſame ſhall be bought without foreſtalling: or elſe that any ſuch common prouiſion made, or hereafter to be made without fraud or couin, by any perſon or perſons, of any of the things aboueſaid, for any city, borough or towne corporat, or for the prouiſion or victualling of any ſhip, caſtle, or fort within the Kings dominions without foreſtalling, which ſhalbe imployed onely to that vſe and purpoſe: or the buying and prouiſion of any of the victuails aboue mentioned, neceſſary for the furniture and prouiſion of the inhabitants, or of the towne of Barwicke, Holy Iſland, or the Marches of England againſt Scotland, which without fraud or couin ſhall be tranſported and conueied, as ſoone as winde and weather may ſerue to ſuch of the places aforeſayd, for the which the ſame ſhall bee ſo prouided, ſhall not bee in any wiſe deemed, adiudged or taken any offence contrarie to this Act.

F

Buying of corne for the change of ſeede.

If any perſon or perſons hauing ſufficient corne and graine for the prouiſion of his or their owne houſe or houſes, and ſowing of their grounds for one yeare, doe buy any corne in any faire or market, for the change of his or their ſeede, and do not bring to the ſame faire or market the ſame day ſo much corne as he ſhall fortune to buy for his ſeede, and ſell the ſame if he can, as the price of corne then goeth in the ſaid market or faire: then euery ſuch perſon or perſons ſo buying corne for ſeede, ſhall forfeit and loſe the double valew of the corne ſo bought. St. 5. & 6. Ed. 6. 14.

G

Buying and ſelling of cattell aliue.

If any perſon or perſons ſhall buy any manner of oxen, ronts, ſteeres, kine, heifers, calues, ſheepe, lambs, goats, or kids liuing, and ſell the ſame againe aliue, vnleſſe he or they do keepe and feede the ſame by the ſpace of fiue weeks, in his or their owne houſes, ground, farme ground, or elſe in ſuch ground or grounds where he or they haue the herbage or common of paſture, by graunt or preſcription, then euery perſon and perſons ſo buying and ſelling againe ſhall loſe the double valew of the cattell, or things ſo bought and ſold againe. The moitie of all which forfeitures afore rehearſed ſhall be to the King, and the other moitie to him or them that will ſue in any of the Kings Courts of Record by B. P. A. or I. &c. in the which no W. E. P. &c. St. 5. & 6. Ed. 6. 14.

H

The authority of Juſtices of peace.

The Juſtices of peace in euery County within this Realme or Wales, at their quarter Seſſions, ſhall haue full power and authoritie by vertue of this Act, to inquire, heare, and determine all and euery the defaults and offences, committed or done contrary to this Act within the County where any ſuch Seſſions ſhall be kept, by Inquiſition, preſentment, bill, or information before them exhibited, by examination of two lawfull witneſſes, or by any of the ſame wayes or meanes, by the diſcretion of the ſaid Juſtices, and to make St. 5. & 6. Ed. 6. 14.

proceſſe

proceſſe thereupon, as though they were indicted before them by Inquiſition, or by verdict of twelue men, or more, and vpon the conuiction of the offendor, by information or ſute of any other than the King, to make extracts of the one moity of the forfeitures to bee leuied to the Kings vſe, as they vſe to doe of other fines, iſſues, and amerciaments growen in the Seſſions of peace, and to award execution of the other moity for the complainant or informer againſt the offendor by Fieri facias, or Capias, as the Kings Juſtices at Weſtminſter may doe, and vſe to doe. And if any ſuch conuiction or attaindet, ſhall hereafter happen to be at the Kings ſute onely, then the whole forfeitures to bee extracted, and leuied to the Kings vſe onely. Whatſoeuer perſon ſhall at any time hereafter be punished by vertue of this Act, for any thing mentioned in this Act, then the ſame perſon ſhall not otherwiſe be vexed, troubled, ſued, or put to any paine or punishment for that one thing, wherefore he or they ſhall haue beene ſo punished.

But once punished for one offence.

St. 5. & 6. Ed. 6. 14.

Prouided alwaies, that it ſhalbe lawfull to euery perſon or perſons which ſhalbe aſſigned and allowed by three Juſtices of the peace of the county where he ſhall dwell, thereunto, to buy (otherwiſe than by foreſtalling) corne, graine, or cattell, to bee tranſported or carried by water from any port, or place within the ſaid realm, or Wales, vnto any other port, or place within the ſaid realm, or Dominions, if he or they ſhall without fraud or couin, ſhippe or imbarke the ſame within fortie dayes next after he or they ſhall haue bought the ſame, or taken couenant, or promiſe for the buying thereof, and with ſuch expedition and diligence as wind and weather ſhall ſerue to carrie & tranſport the ſame to ſuch port or place, as his or their cockets ſhall declare, and there do diſbarke, vnlade, and ſell the ſame, and do bring a true certificat thereof, from one Juſt. of peace of the County, or Maior, or Bailife of the towne corporat where the ſame ſhalbe vnladen, and alſo of the Cuſtomer of the port where ſuch vnlading ſhalbe, of the place, and day, where the ſayd corne or cattell ſhalbe diſbarked, vnladen, and ſolde to be directed vnto the Cuſtomer & Comptroller of the port were the ſame was imbarked.

I

Tranſporting allowed by Juſtices of peace.

St. 5. & 6. Ed. 6. 14.

At all times when wheate ſhall be commonly at the price of fiue ſhillings eight pence the quarter, or vnder, mault & barley at three ſhillings foure pence the quarter, or vnder, otes, or otes maulted, at the price of two ſhillings the quarter, peaſe or beanes at the price of foure ſhillings the quarter, or vnder, & rie or meſcelin at the price of fiue ſhillings the quarter, or vnder, (all which quarters ſhalbe intended to be of London meaſure) then it ſhalbe lawfull to euery perſon & perſons (not foreſtalling) to buy, ingroſſe, & kepe in his or their graners, or houſes ſuch corne of the kindes aforeſaid, as without fraud or couin ſhalbe bought, at, or vnder the prices beſore erpreſſed, any thing in this Act to the contrary notwithſtanding. Prouided alwaies, that this act, or any thing therein contained, extend not to charge any perſon or perſons for any the offences aboue mentioned, vnleſſe he or they be ſued for the ſame within two yeares next after ſuch offence done or committed.

K

When corne may be ingroſſed.

Within what time the ſute ſhalbe commenced.

St. 5. & 6. Ed. 6. 14.

Prouided alwayes, that it ſhall bee lawfull to euery of the Kings ſubiects, now dwelling & inhabiting, or that hereafter ſhall dwell and inhabite within one mile of the maine Sea to buy all manner of fiſh freeſh and ſalted (not foreſtalling the ſame) & to ſel the ſame againe at reaſonable prices, this Act, or any thing therein contained to the contrarie in any wiſe notwithſtanding. Pro-

L

Buying and ſelling of fiſh neere the ſea.

Drouers licenced may buy and ſell cattell.

uided alſo, that it ſhall be lawfull to all and euery perſon and perſons knowne to be a common Drouer or Drouers being licenced, or authorized, and allowed in writing by three Iuſtices of peace, whereof one to be of the Quorum of the Countie or Counties where the ſame Drouer or Drouers ſhall be moſt abiding & dwelling, to buy cattell in ſuch Shires & Counties where Drouers haue bin wont in times paſt accuſtomably to buy cattell, at their free liberties and pleaſures, and to ſell the ſame as is aforeſaid at reaſonable prices, in common faires and markets diſtant from the place or places, where he or they ſhal buy the ſame, fortie miles at the leaſt, ſo that the ſame cattell be not bought by the way of foreſtalling. Prouided alwaies, that ſuch licence of the Iuſtices of the Peace, ſhal not indure aboue one yeare, vnleſſe the ſame be yearly renewed by ſo many Iuſtices as is aforeſaid.

The continuance of a licence.

12 Becauſe ſince the making of the foreſaid Statute of Ann. 5. & 6. Ed. 6. diuers perſons by their owne ſute, were licenced to become Drouers of cattel, badgers, laders, kidders, cariers, buiers, or tranſporters of corne, graine, butter and cheſe, thereby to liue eaſily, and to leaue their honeſt labour in huſbandry, or manuall occupations, and alſo to inhaunce the priſes of corne, graine, and other victuals: by which meanes they oppreſſed the common-wealth, only to procure vnto themſelues both wealth, and eaſe: for the reDreſſe whereof by a Statute made Anno 5. Eliz. it was enacted, That if any licence ſhall be made to any badger, lader, kidder, or carier of corne, drouer of cattell, buyer or tranſporter of corne and graine, butter or cheſe, otherwiſe than in the generall and open Quarter Seſſions of the peace holden in the ſhire where the party admitted doth, and by the ſpace of three yeares before the Teſte of his Licence hath dwelled: Or other than to ſuch perſon as is or hath beene married, is a houſholder, no houſhold ſeruant or retainer, & thirtie yeeres of age at the leaſt: Or to haue continuance for more than one yeere: or which beareth not date the day and place where the Seſſions bee holden: Or is not ſigned and ſealed with the handes and ſeales of three Iuſtices of peace being preſent at the ſame Seſſions at the leaſt, whereof one to be of the Quorum, the ſame Licence ſhall be voide: And the party which taketh the ſame, ſhall forfeit fiue pounds. And no perſon ſhall vpon the paine of the forfeiture of fiue pounds, by the authoritie of ſuch Licence buy any corne out of open faire or market, to ſell the ſame againe, except he be thereunto ſpecially licenced by expreſſe words in his licence. The moitie of which forfeitures ſhall be to the Qu. her heires and ſucceſſors, and the other moitie to him or them that will ſue for the ſame in any of the Q. Courts of Record by B. P. A. or I. wherein no W. E. P. &c. But this Act ſhall not extend to preiudice the liberties of any citie, or towne corporat, but euery of them, may lawfully aſſigne and licence Purueiors for the prouiſion of the ſame citie, or towne, as they might haue done before. Neither ſhall this Act bee preiudiciall to the Inhabitants within the Counties of Weſtmerland, Comberland, Lancaſter, Cheſter, Yorke, or any of them, but they may doe as they haue vſed to doe: And the Iuſtices of peace in euery County within this Realme, or Wales, ſhall haue authoritie to inquire, heare, and determine all offences committed contrary to this ſtatute by inquiſition, preſentment, bill, or information before them exhibited, and by examination of two lawfull witneſſes, and to make proceſſe thereupon as though they were indited by inquiſition or verdict &c.

Oppreſſion by badgers, kidders, laders, cariers.

5. El. 12.

Obſeruations neceſſarie in al licences.

13 Though

St.1.Ri.3.9. 13 Though by the Statute of Anno 1. R. 3. licence was giuen to aliens and ſtrangers to bring boks into this Realme, and to ſell and retaile them at their liberties, for that there were then few Printers, or ſkilfull binders of bokes within this Realme: But ſeeing ſince there haue beene and are many expert and cunning Printers, and ſkilfull binders of bokes within this Realme, who haue wholly addicted themſelues to the ſaide trades, and made it their whole or chiefe liuing: and therefore to bring into this Realme any printed bokes bound; or for any ſtranger to bring bokes into this Realme, to be by them ſold by retaile were a great oppreſſion and preiudice to the Stationers, and alſo the ſame bokes would be ſo much the dearer, and ſo hurtfull to others, who ſhould buy thoſe of them: Therefore by a Statute made Anno 25. H. 8. it was ordained, That if any perſon reſiant or inhabitant within this realme ſhal buy to ſell againe any printed bokes brought from any parts out of the Kings obedience, ready bound in bords, leather, or parchment, hee ſhall forfeit for euery boke bound out of the Kings obeiſance, and brought into this Realme, and bought by any perſon within the ſame to ſell againe, vj. ſ. viij. d. to the King, and the party that wil ſeiſe, or ſue for the ſame in any of the Kings courts of Record by B. P. J. &c. wherein no W. E. P. &c. And if any perſon inhabitant or reſiant within this realme, ſhall buy within this realme of any ſtranger borne out of the Kings obeiſance (other than of denizens) any printed bokes brought from any parts beyond the ſea (except onely in groſſe, and not by retaile) he ſhal forfeit for euery bok ſo bought by retaile vj. ſ. d. to the King, and the party that wil ſeiſe or ſue for the ſame in any of the Kings courts of Record, by B. P. or J. &c. wherein no W. E. P. &c. The ſaid forfeitures to be alwaies leuied of the buyers of ſuch boks contrary to this ſtatute. For that it was then thought expedient, that Printers and ſellers of printed bokes, ſhould as well be reſtrained from the oppreſſion of others, by making exceſſiue prices, in ſale or binding of their bokes, as it was by the ſaid ſtatute prouided that they ſhould not be oppreſſed by others: Therefore by the before St.25.H.8.15 rehearſed Statute of Anno 25. H. 8. it was further eſtabliſhed, That if any Printers or ſellers of Printed boks, inhabiting within this Realme, do at any time in ſuch wiſe inhance or increaſe the prices of any ſuch printed bokes, in ſale, or binding, at too high and vnreaſonable prices, in ſuch wiſe as complaint thereof be made to the King, or vnto the Lord Chancellor, Lord Treaſurer, or any of the chiefe Iuſtices of the one Bench, or of the other: Then the ſame Lords, or two of any of them, ſhall haue authoritie to enquire thereof, as well by the othes of twelue honeſt and diſcrete perſons, as otherwiſe by due examinations by their diſcretions: and after the ſame inhauncing and increaſing of the prices of the ſayd bokes and binding ſhall bee ſo found by the ſayd twelue men, or otherwiſe by the examination of the ſaide Lord Chancellor, Lord Treaſurer, and Iuſtices or two of them: Then the ſame Lords, or two of them at the leaſt, ſhall haue power to redreſſe ſuch inhancing of the prices of printed bokes from time to time by their diſcretions, and to limite the prices as well of the bokes, as for the binding of them. And ouer that, the offendor or offendors being conuict by examination of the ſaide Lordes, or two of them, or otherwiſe ſhall forfeit for euery boke by them ſolde, whereof St.5.Ri.22. the price ſhall bee enhaunced for the boke and binding thereof three ſhillings, foure pence to the King and party grieued, that will complaine vpon the ſame in manner and forme aforeſaid.

Oppreſſion of Printers and Stationers.

Oppreſſion by Printers or Stationers.

14 It appeareth by the preamble of the ſtatute of An. 5. R. 2. that the carry-

ing of gold or ſiluer in money, veſſell, plate or iewells forth of the Realme, was then accounted a great miſchife, oppreſſion and deſtruction of this land, which the policie of this State hath before, and ſince, by ſeuerall Statutes endeuoured to reſtraine: As appeareth by the ſtatutes of Añ 9. Ed. 3. Anno 5. R. 2. Anno 4. H. 2. Anno 2. H. 6. Anno 17. Ed. 4. Anno 4. H. 7. and Anno 19. H. 7. Whereupon by the ſayde ſtatute of Añ 9. Ed. 3. & Anno 5. R. 2. it was eſtabliſhed, That whoſoeuer doth ſend, or carrie out of the Realme of England, any gold, or ſiluer in money, bullion, plate, or veſſell, without the Kings licence, (ſauing for his reaſonable expences, Anno 2. H. 4.) ſhall forfeit the valew of the ſumme carried forth: And he which is vpon his paſſage in any ſhippe or veſſell, for to goe out of any port, hauen, or creeke, ſhall immediatly confeſſe and declare, after warning vnto him giuen by the Kings ſearcher, what gold or ſiluer in coine or maſſe he hath with him for his expences, or elſe that money ſo concealed ſhall be alſo forfeited to the King: But by the ſtatute of Anno 2. H. 6. Raunſoms for fines of Engliſh priſoners taken beyond the Sea, and the money that ſouldiers ſhall carrie with them for their reaſonable coſts be excepted, ſo that the ſame be not done without the Kings licence: And alſo by the ſame ſtatute is excepted money for things bought in Scotland to be brought to the parts adioyning. And by the ſaide Statute of Anno 19. H. 7. it was ordained, That no perſon ſhall carry or conuey, nor cauſe to be carried out of this Realme, any bullion, plate, or coine of golde or ſiluer into Ireland aboue the ſumme of vj. ſ. viij. d. nor conuey any ſuch bullion into any ſhip or boate, vpon paine of forfeiture of the ſame, and of impriſonment and fine at the Kings pleaſure.

Oppreſſion by tranſporting of gold of ſiluer.

St. 9. Ed. 3. 2. St. 5. R. 2. 7. St. 2. H. 4. 5. St. 2. H. 6. 6. St. 19. H. 7. 5.

Oppreſſion by tranſporting copper, braſſe, &c.

15 Becauſe there is no mine of copper mettall within this realme, where ſufficient copper may be gotten, for the vſe of the King and his people: and for that ſeuerall other mettalls be mixed therewith, of which diuers veſſells and inſtruments be made: And therefore the tranſporting thereof beyond the ſea, was found by experience to be a great hinderance, and oppreſſion to the workers thereof, and alſo to all thoſe that ſhould haue the vſe and occupation of the ſame; which were in effect all ſort of houſe-keepers: wherefore for the reſtraint of the tranſportation of the ſame, firſt one Statute was made Anno 21. H. 8. and after another Anno 33. H. 8. and laſtly, a third Anno 2. Ed. 6. By which two laſt Statutes it was enacted, That no perſons ſhall carry or conuey, or ſhip, to the intent to carry or conuey, any braſſe, copper, latten, bel mettall, pan mettall, or ſhroffe mettall, whether it be cleere or mixed (tinne and lead onely excepted) into any parts beyond the ſea, or into any outward dominion, vpon paine to forfeit the double value thereof, and x. l. for euery thouſand weight of the ſame mettall ſo carried, or ſhipped to the intent to be carried, to the King, and him that will ſue for the ſame in any of the K. courts, by A. B. P. or J. wherein no W. E. P. &c.

St. 21. H. 8. 19. St. 33. H. 8. 7. St. 2. E. 6. 37.

Oppreſſion of Pewterers.

16 For that a great number of perſons occupying the trade and faculty of pewterers within this Realme were decayed & oppreſſed in eſtate, by reaſon that much ware made of tinne was brought out of other countries into this Realme, and becauſe ſtraungers did learne the occupation of Pewterers in this Realme, and then did depart the Realme, and taught it to the people of forraine Nations: and for that ſometime Engliſhmen borne would trauaile into other countries, and teach the ſame to forrainers: for the reſtraint whereof by a Statute made Anno 25. H. 8. it was ordained, That no perſon inhabiting

St. 25. H. 8. 9. St. 33. H. 8. 4.

biting within this Realme, ſhall buy, or take by exchange for other wares any wares made out of this Realme of tinne, or mixt with tinne, as platters, diſhes, ſawcers, pots, baſons, ewers, flaggons, goblets, ſaltſellers, ſpones, or any other wares made of tin or pewter whatſoeuer it be, vpon paine of forfeiture of the ſame wares, in whoſe hands ſoeuer it may be found, or taken, to the vſe of the King, and the finders thereof, and alſo lawfull currant money of this Realme, to the valeue thereof. And further, that no ſtranger borne out of this Realme, ſhall vſe the ſaid craft of Pewterers, nor worke any maner of veſſell, or other ware aforeſaid to be made of tin or pewter within any part of this Realme, vpon paine of forfeiture of ten pounds to the vſe of the K. and F. to be recouered by A. I. wherein no W. E. P. and alſo vpon paine of forfeiture of the ſame pewter or tin ſo wrought, in whoſe hands ſoeuer it be found, or taken: and no perſons borne within this Realme, occupying the laide craft of Pewterers, ſhal reſort into any ſtrange countries, there to teach or exerciſe the ſaid craft of Pewterers, vpon paine to loſe the priuiledge & benefit of an Engliſh man.

A Pewterer ſhal not goe to dwell in an other Realme.

17 Becauſe complaint was made in Parliament, that Linnen Drapers, Woollen Drapers, Haberdaſhers, Grocers, and Percers, dwelling in the Country out of cities, boroughs, townes corporat, and market townes, did not only occupie the art and myſterie of the ſaid Sciences in the places where they dwelt, but alſo came vnto the ſayd cities, boroughes, townes corporat, and market townes, and there ſold their wares, and toke away the reliefe of the inhabitants of the ſaid cities, market townes &c. to the great decay, oppreſſion and vtter vndoing of the inhabitants of the ſame: For the reformation whereof, by a Statute made Anno 1. & 2. P. & M. it was enacted, That no perſon dwelling in the Countrie any where within England, out of any cities, boroughs, townes corporat, or market townes, ſhall ſell, or cauſe to be ſold by retaile, any Woollen cloth, linnen cloth, Haberdaſh wares, Grocerie wares, or Percerie wares, at, or within any of the ſaid cities, boroughs, townes corporat, or market townes, or within the ſuburbs, or liberties thereof (except it be in open faires) vpon paine of forfeiture for euery time ſo offending the ſumme of vj. ſ. viij. d. and the whole wares ſo ſold, proffered, and offered to be ſold, contrarie to the intent of this Act, whereof one moitie ſhall be to the King, and the other moitie to him or them that will ſeiſe or ſue for the ſame, in any of the Kings Courts of Record by A. B. P. I. or otherwiſe, wherein no W. E. P. &c. But this ſhall not be hurtfull to any perſons that bring any of the ſaid wares, to any of the ſaid cities, market townes, &c. to be ſold by whole ſale, in groſſe, and not by retaile, but euery of them may lawfully ſell the ſame by whole ſale, in groſſe, and not by retaile, as they might haue done before. Neither ſhall this Act extend to any perſons that dwell in the Country out of any of the ſaid cities, boroughs, &c. but euery of them at any time when he ſhal be free of any of the guildes or liberties of any of the ſaid cities, market townes &c. and dwell within any of them, ſhall or may ſell, or cauſe to be ſolde any of the wares aforeſaid by retaile: Neither ſhall this Act be preiudiciall to the priuiledges of the vniuerſities of Oxford & Cambridge, or either of them. And it ſhall be lawfull to all perſons to ſell, or cauſe to be ſold by retaile, or otherwiſe, all linnen or woollen cloth of their owne making, in euery Citie, Borough, Towne corporat, and Market Towne, as freely as they might haue done before.

5o 1. & 2. P. & M. 7.

Oppreſſion of inhabitants of market townes

Cloth of their owne making.

18 It appeareth by the wordes of the ſtat. of An. 25. H. 8. That for one man to get and take into his hands diuers farmes, which were ordained & prouided habitations and liuings for diuers men: Or for one man to get into his poſſeſsion many paſtures or walkes for ſheepe, by the occupying whereof ſeuerall perſons before had liued, was accounted a moſt grieuous & heinous oppreſsion, & to tend to the high diſpleaſure of almighty God, to the decay of hoſpitalitie, to the diminiſhing of the kings people, to the let of cloth making, whereby many more people did liue, and to turne & incline to the vtter deſolation & deſtruction of this realme: for the redreſſe whereof, by the ſame ſtatute it was ordained, That no perſon or perſons ſhal receiue or take in farme, for terme of yeres, life, or at wil, by indenture, copy of Court Roll, or otherwiſe, any more houſes or tenements of huſbandry, whereunto any lands are belonging in town, village, hamlet, or tything within this realme, aboue the number of two ſuch holds or tenements: and no manner of perſon ſhall haue or occupie any ſuch holds ſo newly taken, to the number of two, as is before expreſſed, except he or they be dwelling within the ſame pariſhes where ſuch holds be, vpon paine of forf. for euery weeke that he or they ſhall haue, occupy, or take any profits of ſuch holds 3. s. 4. d. whereof the one moity ſhalbe to the king, & the other to the party that wil ſue for the ſame in any of the K. Courts by A. B. P. I. or otherwiſe within one yere next after ſuch offence committed. And by the ſtat of An. 4. H. 7. it was eſtabliſhed, That if any perſon doe take any ſeuerall farmes more then one, of any manors, lands, tenemẽts, perſonages, or tythes within the iſle of Wight, whereof the farme of them altogether ſhall exceed the ſumme of x. markes, the leſſee ſhall forf. to the King for euery ſuch taking xl. l.

St. 25. H. 8. 13

Oppreſsion by taking of ſeuerall farmes.

St. 4. H. 7. 16.

Taking of farmes in the iſle of Wight.

A

19 And for the reaſons laſt ſpecified, the ſaid ſtat. of an. 25. H. 8. did alſo ordaine, That no perſon ſhall kepe, occupy, or haue in his poſſeſsion in his owne proper lands, nor in the grounds of any other which he ſhall haue or occupy in farme, nor otherwiſe haue of his owne proper cattell, in vſe, poſſeſsion, or property, by any manner of meanes or couin, aboue the number of two thouſand ſheepe at one time, within any parts of this realm, of all ſorts & kinds (alwaies accounting 6. ſcore to the hundred, and 10. ſuch hundreds to the thouſand) vpon paine to forf. for euery ſheepe that any perſon ſhall haue or kepe, aboue the number limited by this act, 3. s. 4. d. to the King and ſuch as will ſue for the ſame by A. B. P. I. in any court of Record, wherein no W. E. P. &c. So that the ſuit be commenced for the king within three yeres, and for a ſubiect within one yere next after the offence committed. But Lambes vnder the age of one whole yere, and as much as ſhall be from the time of the falling of them vnto the feaſt of the Nativity of S. John Baptiſt ſhal not be taken for ſheepe prohibited by this Statute.

St. 25. H. 8. 13

Oppreſsion by keeping of many ſheepe.

Lambes.

B

If any perſon hauing ſheepe of his owne, happen to be made executor or adminiſtrator to any perſon which had ſheep at his death, or happen to be maried to any perſon which ſhall haue ſheepe at the time of the mariage, by reaſon whereof the ſaid perſon ſhall by ſuch meanes haue aboue the number of 2000. then he ſhall loſe no penalty for hauing aboue the number of 2000. ſheepe, by ſuch meanes, ſo that within one yeare next after ſuch aduancement, he do put to ſale, or otherwiſe diſpoſe ſo many of the ſaid ſheepe, ſo to him aduanced, or els of his owne ſheepe that he had before, ſo that aboue one yere he ſhall not kepe, haue, or occupy by any ſuch meanes, or otherwiſe by any fraud, any more number of them, then is before limitted, vpon paine before rehearſed.

Sheepe comming by executorſhip or mariage.

2.25.H.8.13 If any perſon by his laſt Will giue to any child within age any number of ſhéepe, & appoint them by his laſt will to be kept by his executors, or by any other perſon, vntill the foreſaid child ſhall come to a certaine age limitted by his laſt will: then after the death of the Teſtator, the ſaid ſhéepe ſo being in poſſeſſion of the executors, or of any other perſon to the vſe of any ſuch child within age, for the time that he ſhalbe limitted to haue the ſaid ſhéepe, by the will of the Teſtator, ſhall not be accounted againſt the ſaid executors, nor any perſon hauing the ſhéepe for the intent aforeſaid, any of the number of the ſaid ſhéep prohibited by this act. C

Shéepe giuen by will to a child within age.

25.H.8.13. Euery perſon being the Kings tempozall ſubiect, or borne vnder his obeyſance, which ſhall haue or be ſeiſed of inheritance, in poſſeſſion, or in vſe, or that ſhall haue a ioynture in vſe, or in poſſeſſion, or ſhalbe tenant in dower, or by the courteſie of or in any manors, lands, tenements, paſtures, feedings, or liberty of foldage, within any part of this realme of England, Wales, or the Marches of the ſame, may haue, kéepe, & maintain vpon the ſame, his own demeſn lands, & all other his paſtures, feedings, & fold courſes, which he ſo hath, as many his own ſhéep & lambs, in number to his own proper behoofe, as he lawfully might haue had and kept vpon the ſame at any time before the making of this act. D

Shéepe kept vpon inheritance or freehold.

25.H.8.13. In caſe any ſuch perſon hauing any ſuch eſtate in vſe, or in poſſeſſion, of, or in any lands, tenements, paſtures, feedings, or liberties of fold courſes, do kéep vpon the ſame the number of 2000. ſhéepe, or aboue, then he ſhall not in any wiſe kéepe or haue any ſhéepe aboue the number of 2000. vpon any landes, paſtures, or feedings, which he ſhal haue in farme, or otherwiſe, vpon pain of forfeyt. for euery ſhéepe, beſides the ſaid number of 2000. 3. s. 4. d. E

He that kéepeth his number vpon his inheritance, ſhall not kéepe vpon a farme.

25.H.8.13. In caſe the ſaid demeſne lands, tenements, paſtures, feedings, & liberties of fold courſes of any perſon before reherſed, ſuffice not for the feeding, paſturing, & kéeping of 2000. ſhéepe, then any ſuch perſon may haue or feed vpon the ſaid demeſn lands, & vpon his farme holds (which he lawfully may haue) to the ſaid number of 2000. ſhéepe, & not aboue, vpon paine of forfeyt. for euery ſhéepe aboue that number 3. s. 4. d. F

Shéepe kept vpon demeſns and farmes.

25.H.8.13 It ſhall be lawfull to euery perſon kéeping a houſhold, to haue from time to time ſuch conuenient number of ſhéepe, aboue the number expreſſed in this act, as ſhall bée neceſſary for the onely expences of his houſhold, to bée prouided, kept, and fed, in and vpon his owne lands, or other lands, ſuch as he lawfully can prouide for, in farme, or otherwiſe, ſo that he at no time ſhall haue for the expence of his houſhold, or by colour of the ſame, aboue the number to him limitted by this act, any number of ſhéepe moe then ſhall ſuffice for the onely expences of his houſhold for one yeare, without fraud or couin. And it is lawfull for all ſpirituall perſons to kéepe ſuch & as many ſhéepe vpon their owne lands, and after ſuch maner, and none otherwiſe, as they might haue done before the making of this act. G

Shéepe kept for the maintenance of a mans houſe.

Spirituall perſons.

20 As it is a thing farre vnfit, and not conſorting with their function, that ſpirituall perſons, who ought ta line of the altar, & to be chiefely imployed and deuoted to the ſeruice of God, the adminiſtration of his ſacraments, preaching of his Word, and inſtruction of his people, ſhould buſy themſelues with taking of farmes, buying & ſelling for gaine in faires & markets, occupying of Parſo- A

nages

nages or Vicarages by farme, or with the vſing or keeping of Tanne houſes or Bꝛewhouſes: So it is an oppꝛeſſion and meanes of impoueriſhment of other tempoꝛall perſons, who do chiefely or partly liue by the ſame traues: and therfoꝛe by a ſtat. made An. 21. H. 8. it was enacted, That no ſpirituall perſon ſhall take no farme to himſelfe, or to any perſon to his vſe, of the leaſe or graunt of the K. or any other perſon or perſons, by letters patents, indentures, writings, by woꝛd, or otherwiſe by any manner of meanes, any manoꝛs, lands, tenements, or other hereditaments, foꝛ terme of life, yeares, or at will, vpon paine to foꝛf. foꝛ euery moneth that he or they to his vſe doe occupy ſuch farme, by reaſon of ſuch graunt or leaſe, x. l. to the K. & him that will ſue, to be recouered in any of the K. Courts by A. B. P. J. wherein no W. E. P. And that no ſpirituall perſon, of what eſtate or degree ſoeuer he be, ſhall by himſelfe, or any other foꝛ him, to his vſe, bargaine, & buy to ſell againe foꝛ gaine, in any markets, faires, or other places, any manner of Cattell, Corne, Lead, Tin, Hides, Leather, Tallow, Fiſh, Wool, Wood, or any maner of victual or marchandize, of what kind ſoeuer they be, vpon paine to foꝛfeit treble the value of the things ſo bought to ſell againe to the K. & him that will ſue, to be recouered in any of the K. Courts by A. B. P. J. wherin no W. E. P. But a ſpirituall perſon, who without fraud buyeth any hoꝛſes, cattell, goods, &c. with only intent at the buying thereof to imploy the ſame to the neceſſary apparel of himſelfe, his ſeruants, or houſhold, or foꝛ the only occupying or manuring of his glebe or demeſne lands annexed to his church, or foꝛ the neceſſary expences of his houſehold, & after the buying or exerciſing thereof, miſliketh the ſame, that they ſhould not be good, profitable and conuenient foꝛ the purpoſes aboueſayde, foꝛ the which they were bought, then he may lawfully bargaine, and put them away. And alſo other ſpirituall perſons not hauing ſufficient glebe or demeſne lands in their owne hands in the right of their churches, houſes &c. foꝛ paſturing of cattel, or increaſe of corne foꝛ the only expences of their houſeholds, or foꝛ their cariages and tourneyes, may take in farme other lands, & buy & ſell corne and cattel foꝛ the only manurance, tillage, & paſturage of ſuch farmes, ſo that the increaſe theroſ be alwaies imployed to the only expences in their houſeholds, and not to buy & ſell againe foꝛ any other commodity, but only the ouerplus of ſuch corne & cattel aboue the expences of their houſholds, if any ſuch ſhall happen to be bꝛed and increaſed thereof, without fraud or couin.

Oppꝛeſſion by ſpirituall perſons in taking of farmes.

St. 21. H. 8. 13

Oppꝛeſſion by the in buying and ſelling.

B

And foꝛ the cauſes aboꝛeſaid, by the ſaid ſtatute of An. 21. H. 8. it was moꝛeouer oꝛdained, That no ſpirituall perſon, beneficed with cure, ſhall haue or occupy by himſelf, or any other to his vſe, any Parſonage or Vicarage in farme, of the leaſe or graunt of any other perſon, to take any rent or pꝛofit out of any ſuch farme, vpon pain to foꝛf. xl. l. euery weeke that he or any to his vſe ſhal occupy any ſuch farme, & alſo ſhall foꝛf. ten times the value of ſuch pꝛofite or rent which he ſhall take out of any ſuch farme, to the K. & J. to be recouered by A. J. P. &c. wherein no W. E. P. &c. And moꝛeouer, no ſpirituall perſon ſhall haue, vſe, or kepe by himſelfe, or any other to his vſe or cõmodity, any Tan-houſe, to be occupied to his vſe or cõmodity, or any Bꝛewhouſe, to any other intent, then only to be ſpent and occupied in his own houſe, vpon paine to foꝛfeit foꝛ euery mouth ſo vſing or occupying any of the ſaid miſteries, x. l. to the K. and J. to be recouered by A. P. J. wherein no W. E. P. &c.

St. 21. H. 8. 13

Oppꝛeſſion by them in farming of perſonages &c.

Oppꝛeſſion by keeping a Tanne-houſe, or Bꝛewhouſe

Oppꝛeſſion by taking of exceſſiue toll.

21 Becauſe complaint was made in parliament, that ſome vſe oppꝛeſſe the people, by taking exceſſius & outragious toll in market townes, therefoꝛe by the ſtatute

St.3.E.1.30. ſtat. of Weſt. 1. it was enacted, That if any do take outragious toll contrary to the cuſtome of the realme in a market towne, which is the K. towne, and let to ſee farme, the K. ſhal ſeiſe the franchiſe of the market into his owne hands: and if it be anothers towne, and that be done by the Lord of the towne, the K. ſhall do in like ſort: and if it be done by a Bailiſe or other mean officer, without the commandement of his Lord, he ſhall reſtore to the plaintife for his outragious taking ſo much as he hath receiued of him, if he hath caried away the toll, and ſhalbe impriſoned xl. daies.

No oppreſſion ſhalbe done to ſtrangers.

22 The gouernors of this realm hauing from time to time a ſpecial regard that reciprocall courteſie & fauor might be performed to all ſtrangers & aliens, that did come into this realm to marchandize, or to any other good intent, & that Ius gentiũ might be yelded vnto them, haue made many good laws & ſtatutes to protect & defend them from oppreſſions & wrongs. As K. Henry the third or-
St.9.H.3 30. dained by the ſtat. of Magna Charta, That all marchants (if they were not lawfully prohibited before) ſhall haue their ſafe & ſure conduct to depart forth of the realme, & to come into England, & to tarry, & go through England, aſwel by land as by water, to buy or ſell without any manner of euill tols, according to the ancient & lawful cuſtomes (ſauing in time of warre.) And if they be of a country in warre with vs, they ſhalbe attached without hurt of their bodies or goods, vntill it be knowne to vs, or our chiefe iuſtice, how the marchants of our land be vſed in that country wherwith we haue war: & if our marchãts be wel
St.9.E.3 1. vſed there, theirs ſhalbe ſo likewiſe with vs. And by the ſtat. of an. 9. E. 3. it was
St.25 E.3.2. enacted, That all marchant ſtrangers & denizens, & all other that will buy & ſel corne, wines, auer de pois, fleſh, fiſh, & all other liuings & victual, wools, clothes & al other things vendible, from whence ſoeuer they come, at what place ſoeuer it be, city, borough, towne, port of the ſea, fayre, market, or elſe where, within the realme, within franchiſe, or without, may freely ſel them to what perſon it ſhal pleaſe thẽ, aſwel forreins as denizens, in groſſe, at retaile, or by parcels, at their wils to all people that will buy the ſame (except to the enemies of the K. & his realme) notwithſtanding any charter, vſage, or cuſtome. And if any diſturbance be done to any marchant ſtranger, or denizen, or to any other, for the ſale of ſuch things in any city, borough, towne, port of the ſea, or other place which hath franchiſe, & the maiors & bailifs, or other, which haue the rule of ſuch franchiſe, being required by ſuch marchants, or other, thereof to prouide remedy, & do not, & thereof be attainted, the franchiſe ſhalbe ſeiſed into the K. hands: & neuertheles, they which haue done ſuch diſturbance, ſhall reſtore to the ſaid marchant his double damages, which he hath therby ſuſtained. And if ſuch diſturbance or interruption be done in ſuch places or townes where no franchiſe is, and the lord, if he be preſent, or his baylife, conſtable, or other ruler of the ſayd townes and places (in the abſence of the lord) being therein required to doe right, and do not, & thereof be attainted, they ſhal yeld to the plaintife damma-ges, as aforeſaid, & the diſturbers in the one caſe, & in the other, as well within the franchiſes as without, if they be attainted, ſhall haue one yers impriſon-ment, and bee ranſomed at the Kings pleaſure. No alien or denizen vpon the foreſaid paine ſhalbe troubled, but he may freely buy ſuch things aforeſaid in the ſaid places, and carry them where it pleaſeth him, to his owne vſe, or to the profit of the king or the realme, ſauing that ſuch Marchants aliens ſhall carry
St.6.R.2. 10. no wine out of the ſame realme. And by the ſtat. of Ann. 6. R. 2. it was eſtabli-ſhed, That all aliens being in friendſhip with the king and the realme, & com-ming into any cities or townes within the realme, with fiſh, or other victuals,

and

and there tarrying, & returning againe to their owne countries, ſhall be vnder the Kings protection: and it ſhall be lawfull to euery of them to cut their fiſh & victuals in pieces, & by retaile or in groſſe to ſell the ſame. And by the ſtat. of an. 14. H. 6. it was prouided, That if any man diſturbe any alien to ſell his fiſh in ſome aforeſaid, he ſhall forfeit x. l. to the K. & him that will ſue. And beſides, the ſtat. of an. 31. E. 3. 10. an. 7. R. 2. 11. an. 11. R. 2. 7. & an. 16. R. 2. 1. were made & prouided to giue liberty, protection, and ſafety to aliens and ſtraungers, and to defend them from wrongs and oppreſſions. St. 14. H. 6. 6.

Oppreſſion by making of yron workes.

23 It appeareth by the preamble of the ſtat. of An. 23. El. that by the erection of ſundry yron mils in diuers places of this realme, not far diſtant from the city of London, & from the downes & ſea coaſts of Suſſex, the neceſſary prouiſion of wood, as well timber fit for building, & other vſes, as alſo all other ſeliable woods ſerning for fuell, doth daily decay, & become ſcant, to the great damage & oppreſſion of the city of London, & the ſuburbes of the ſame, & of al other perſons, hauing occaſion daily to reſort thither from al the parts of this realm: for the remedy whereof, by the ſame ſtatute it was enacted, That no perſon or perſons ſhall conuert or imploy, or cauſe to be conuerted or implyed to coale or fuell, for the making of yron or yron mettall, in any yron mils, furnace, or hammer, any maner of wood, or vnderwood, now growing, or which hereafter ſhall grow within the compaſſe of 22. miles, from & about the city of London, or the ſuburbes of the ſame, or within 22. miles of the riuer of Thames, from Worceſter in the coũty of Orforde downward the ſame riuer of Thames, or within foure miles of the fot of the hils called the Downes, betwixt Arundell and Pemſey in the county of Suſſex, or within foure miles of any of the townes of Winchelſey and Rie, or within two miles of the towne of Pemſey, or within two miles of the towne of Haſtings in the ſaid County, vpon paine to forfeit for euery load of Wood ſo to be implyed or conuerted into coale or other fuell, for the making of yron or yron mettall in any yron mill, furnace, or hammer, as aforeſaid, xl. s. to the Q. and J. to be recouered by A. B. P. J. wherein no W. C. P. J. &c. But this Act ſhall not extend to any Woods growing, or to grow in any ſuch parts of the Wields of Surrey, Suſſex, or Kent, within the ſaid 22. miles of the ſaid Citie of London, and the riuer of Thames, as is diſtant aboue 18. miles from the Citie of London, and 8. miles from the ſayd riuer of Thames. St. 23. El. 5.

Oppreſſion by new yron workes.

And by the ſame ſtatute it was moreouer ordained, That no new yron workes ſhalbe erected within 22. miles of the ſaid city of London, nor within 14. miles of the foreſaid riuer of Thames, nor within 4. miles of the Downs aforeſaid, or of the ſaid towns of Pemſey, Winchelſey, Hallings, or Rie, vpon pain of an hundred pounds to be likewiſe recouered & implyed, as is aforeſaid. But this act ſhal not extend to any woods or vnderwoods of Chriſtopher Darrell, growing or which ſhall grow in the parish of Newbigate. And for the cauſes and reaſons aforeſaid, by one other ſtat. made An. 27. El. it was further enacted, That no perſon or perſons ſhall make, erect, build, or new ſet vp, at, or in any place within the counties of Suſſex, Surrey, or Kent, or any of them, any manner of yron mils, furnace, finary, or blomary, for the making or working of any maner of yron, or yron mettall, other then either vpon ſuch old & former baies or pennes, whereupon hath lately bin, or at the time of the new erection, ſhalbe then ſtanding ſome yron mils, furnace, or hammer, or els in and vpon ſuch lands, as y party or parties ſo erecting any ſuch intended new worke, ſhall continually furniſh the ſame with ſufficient ſupply of his or their owne wood, ſtanding and growing vpon his or their owne ſoile or land, being to him St. 27. El. 1.

or

or them in fee ſimple, fee taile, or for terme of life or liues, without impeachment of waſt at the leaſt, and not otherwiſe: Nor ſhall conuert or imploy, or cauſe to be conuerted to coales or other fuel for the making or working of iron or iron mettall in or about any iron mils, furnaces, hammers, finary, forge, or blomary the body or bodies of any ſound timber tree or trees, apt for the making of good and ſufficiēt cleft wares, or ſawing timber of Oke, Aſh, or Elme, growing of the breadth or bigneſſe of one foot ſquare at the ſtub, or any part of the ſame body or bodies of any ſuch tree or trees, vpon paine of forfeiture for euery iron mill, furnace, forge, finarie, or blomary made, erected, builded, or ſet vp, contrary to the tenor and true meaning of this Act, three hundred pounds: and for euery body of ſuch timber tree ſo imploied or conuerted to coale or fuel, for the making or working of yron, as is aforeſaid, fortie ſhillings to the K. and I. to be recouered by A. B. P. or I. wherein no W. E. P. &c. Prouided alwaies, that it ſhall and may be lawfull to and for the owners of ſuch trees, the bodies whereof haue beene or ſhall be from time to time conuerted and imployed to or for any maner of timber or cleft ware within the wields of Suſſex, Surrey, or Kent, or any of them (the ſame not being within eighteene miles of the citie of London, or eight miles of the riuer of Thames, or foure miles of the townes of Rie and Winchelſey, or within ten miles of Haſtings, or within foure miles of the ſute of the Hills called the Downes betweene Arundell and Pemſey, in the county of Suſſex aforeſaid, or any of them) to imploy the tops and offals of all ſuch trees to or for coales, or other fuel, ſeruing to or for yron works at their owne wills and pleaſures: this ſtatute or any other notwithſtanding.

23.H.8.4. 24 If any Ale or Beere brewer do ſell or take for any barrell, kilderkin, or firkin of ale or beere, aboue ſuch prices as ſhall be aſſeſſed by the Juſtices of peace of the ſhire, or by the maior, ſhirife, or head officer of the citie, borough, or towne corporat, where the ſaid brewer doth dwell, this is an oppreſſion of all thoſe that do buy the ſame ale and beere: and therefore by the ſtatute of Anno 23.H.8. the offendor ſhall forfeit for euery barrel ſo ſold, ſix ſhillings, for euery kilderkin three ſhillings foure pence, for euery firkin two ſhillings, for euerie leſſe veſſell twelue pence, and for a greater than a barrell ten ſhillings to the K. and I. And if any brewer which breweth beere or ale to ſel, ſhal by himſelfe, or any other to his vſe, occupy the myſtery of Coopers, or make any barrels, kilderkins, firkins, or other veſſel of wood, wherein to put his beere or ale, this is an oppreſſion of Coopers, and by the ſaid ſtatute of Anñ 23.H.8. the offendor ſhall forfeit for euery veſſel to the K. and I. iij. ſhillings iiij. pence. But a brewer may keepe a Cooper to bind, hoope, pinne, and amend his veſſels.

Oppreſſion by Brewers.

Oppreſſion of Coopers by Brewers.

25 It is an oppreſſion to many thouſand woollen cardmakers and cardwierdrawers of this realme, who doe liue by the ſame trade, to haue cards for woll brought out of forraine regions into this realm, and here ſold to the hinderance of the ſale of their like wares. And therefore if any perſon ſhall bring or ſend, or cauſe to be brought or ſent any ſuch cards for wool, to be bartered or ſold in England or Wales, by the ſtatute of Añ 39.El. he ſhall forfeit them or the very value of them to the king and him that will ſeiſe or ſue for the ſame.

Oppreſſion by bringing in of woollen cards.

St. 39. Elix. 14
St. 1. Iac. 25.

26 If any perſon ſhall erect a new weare along the ſea ſhore, or in any hauen, harbor, or creeke, or within fiue miles of the mouth of any hauen or creek, or ſhall willingly take, deſtroy, or ſpoile any ſpawne, frie, or brood of any ſea

Oppreſſion by erecting of weares.

Oppreſsion by deſtroying of fiſh.

fiſh, in any weare, or other engine or deuice whatſoeuer, this is an oppreſsion to all thoſe that liue by or vſe fiſhing in thoſe parts, and a hinderaunce to the commonwealth. And therefore by the ſtatute of Ann 3. Iac. the offendor ſhal forfeit for euery time ſo erecting, ſetting vp, taking, or deſtroying of fiſh, tenne pounds to the king and I. And if anie perſon ſhall fiſh with any drawnet or dagnet vnder three inches meaſh, viz. one inch and a halfe from knot to knot (except for the taking of Smoulds in Norffolke onely) or with any net with cannas, or other engine or deuice, whereby the ſpawne, frie, or brood of ſea fiſh may be deſtroyed, this is alſo an oppreſsion to all thoſe that liue by, or vſe fiſhing, and a hinderance to the commonwealth: and therefore the offendor ſhall forfeit ſuch net, and for euery time ſo doing tenne ſhillings, whereof the one halfe to him that will ſue, and the other halfe to the poore of the city, towne, pariſh, or liberty, where the offence ſhall be committed. Stat. 3. Iac. 12

Oppreſsion by nets.

27 For that buying, ſelling, and regrating of wood by greedy and couetous perſons, is a meane to make the ſame dearer, and is a great oppreſsion & hurt to the commonwealth, therefore it is ordained by the ſtatute of Anno 7. Ed. 6. That if any perſon ſhall buy any fuell, coales, or wood, but onely ſuch as will burne or conſume the ſame, or ſuch perſons as ſhall ſell the ſame againe by retaile to ſuch as ſhall burne or conſume the ſame for their owne occupying, without fraud or couin, or wharfingers, or bargemen, he ſhall forfeit to the king and I. the treble value of the ſame wood, coales, or fuell, as ſhal be otherwiſe bought for lucre and gaine. St. 7. Ed 6. 7

Oppreſsion by buying & ſelling of fuell.

Oppreſsion by tranſporting of victualls.

28 If anie perſon ſhall carrie and conuey, or cauſe to be carried and conueyed, any victualls neceſſarie for mens ſuſtenance to anie parts beyond the Sea (vnleſſe it be by licence vnder the Kings great ſeale) ſauing for the victualling of Mariners and Marchants of ſhips paſſing the ſea, and ſauing barrelled butter, and meale, to be carried to the parts of Ireland, as hath beene accuſtomed, this is a meane to enhaunce the prices of victualles within this Realme, and ſo an oppreſsion to the inhabitants of the Realme. And therefore by the ſtatute of Anno 25. H. 8. the partie offending ſhall forfeit the value of the thing carried to the K. and I. St. 25. H. 8. 2

Oppreſsion by vſurie.

29 By the Statute of Anno 37. H. 8. and confirmed and explaned by the Statute of Anno 13. Eli. it is ordained to be vnlawfull vſurie and an oppreſsion, if any man do ſel any marchandiſes or wares to another, and buy the ſame againe within ij. moneths for a leſſe price, knowing them to be the ſame that he ſold: and ſo it is if any perſon by any bargaine, loane, exchange, or ſhift of any wares, or other things, ſhall take in gaines for the forbearing of his mony or other thing one whole yeare, aboue ten pounds in the hundred pounds. And ſo it is, if anie perſon ſhall take aboue tenne pounds for the forbearing of one hundred pounds for a yeare, vpon ſale or mortgage of lands, of the profites of the ſame lands: and in the caſes aforeſaid the offendour ſhall forfeit for euerie ſuch offence the treble value of the wares, marchandizes, and other things ſo bargained, ſold, changed, &c. and the treble value of the iſſues and profits of the ſaid lands ſo taken, by bargaine, ſale, or mortgage, to the king and informer, and ſhall ſuffer impriſonment, and make fine at the kings pleaſure. And all bonds, contracts, and aſſurances collaterall made for paiment of any principall, or money to be lent, or couenant to be performed, for any vſurie in lending or doing of any thing, vpon, or by which loane there ſhall be reſerued St. 37 H. 8. 9 Stat. 13. Eliz. 8 Stat. 39. El. 18

reſerued or taken aboue the rate of x.l. for the 100.l. for one yeare, ſhall be vtterly void: and he that doth take, or couenant, or reſerue to take tenne l. for the forbearance of a hundred l. for one yeare, and ſo after that rate, or any ſumme vnder ten l. ſhall forfeit onely that ten l. or other leſſe ſumme which he doth ſo take, or couenant, or reſerue to take (though it be but a penny, or leſſe than a penny) to the king and informer &c. If A. do lend to B. 100. l. and do bargain and agree with him, that if I. S. doe liue one whole yeare next comming, that then B. ſhall pay him xx. l. for the loane of his 100. l. for a yeare, and if I. S. do die within the yeare, that then B. ſhal pay him but his 100. l. againe, this is an oppreſſion of B. and an vſurious bargaine, and A. is to be puniſhed according to the foreſaid ſtatute of 37. H. 8. For as he made and reſerued the intereſt of xx. l. payable, if I. S. ſhould liue one yeare, ſo he might as lawfully haue put in the liues of twenty other perſons, and ſo deluded the true meaning of the makers of the ſaid ſtatute. And in like ſort, if A. do lend to B. 100. l. for a yeare, and do bargaine with B. that if I. S. ſhall liue vntil the end of that yeare, then B. ſhal pay him xx. l. for the intereſt or loane of his 100. l. for that yeare, and if the ſame I. S. do die within the ſaid yeare, that then B. ſhall repay to A. but lxxx. l. of his principall money, this is an vſurious contract, and an oppreſſion, and to be puniſhed according to the ſaid ſtatute: for in both the foreſaid caſes there was but a ſhadow deuiſed by the lender, to protect him from the penaltie of that ſtatute, which at the time of his loane he meant to offend. And therefore the ſtatute of 13. Eliz. 8. hath well prouided, that the ſame ſtatute of 37. H. 8. ſhall be moſt largely and ſtrongly conſtrued for the repreſſing of vſury, and againſt all perſons that ſhall offend againſt the true meaning of the ſaid ſtatute, by any way or deuice, directly or indirectly.

Ca. lib. 5. 70

Fraudulent ſhadowing of vſurious bargaines.

30 It is an oppreſſion, and manifeſt and palpable iniury, if any perſon doe wilfully, maliciouſly, and vnlawfully cut or cauſe to be cut out the head or pipe of any conduit of any other perſons: or burne or cauſe to be burned any waine or cart laden with coales, or any other goods, or any heape of wood of any other perſons prepared and felled for making of coales, billet, or tallwood: or to cut or cauſe to be cut out the tongue of any tame beaſt, being aliue, of any other perſons: or to cut, or cauſe to be cut off, the eare or eares of any of the kings ſubiects, otherwiſe than by authoritie of Law, chaunce-medley, ſudden affray, or aduenture: or to barke any appletrees, peareetrees, or other fruit trees of any other perſons: in all which caſes, by force of the ſtatute of Anno 37. H. 8. the offendor ſhall forfeit to the party grieued treble dammages, to be recouered by action of Treſpas at the common law, and to the king ten l. for a fine.

Oppreſſion by cutting out the head or pipe of a conduit.

Oppreſſion by burning a cart laden.

Oppreſſion by cutting off eares.

Oppreſſion by barking of trees.

Sta. 37. H. 8. 6

31 It is an oppreſſion, and a reſolued intent to doe hurt and wrong to others, if any perſon ſhal hawk or hunt with his ſpaniels in any ground (except his owne) where corne or graine ſhall then grow, at ſuch time as any eared or codded corne or graine ſhall be ſtanding and growing vpon the ſame, or before ſuch time as ſuch corne or graine ſhall be ſhocked, cocked, hiled, or copped: in which caſes the ſtat. made an. 23. El. hath ordained, That the offendor ſhal forfeit for euery time that he ſhal ſo hawke or hunt, without conſent of the owner of the corne, to ſuch perſon as ſhall be owner of the eared or codded corne, xl. s.

Sta. 23. El. 10

Oppreſſion by hawking or hunting in corn growing

32 If anie perſon ſhall by day or night vnlawfully, without authoritie, breake, cut downe, cut out, or deſtroy the head or dam of any pond, pole, moat, ſtagn, ſtew, or ſeuerall pit, wherein fiſh ſhalbe put, or ſtored by the owner ther-

Oppreſſion by taking of fiſh.

of: Or ſhall wrongfully fiſh in any of the ſaid ſeuerall ponds &c. to the intent to deſtroy, kill, take, or ſteale away any of the ſame fiſh, againſt the will of the owner or poſſeſſor thereof, not hauing lawfull authoritie ſo to doe, this is an oppreſſion to the ſaid owner or poſſeſſor: and therefore by the Statute of Anno 5. Elizab. it is enacted, That the offendor being lawfully conuict of any of the ſaid offences, at the ſuit of the King or the partie grieued, ſhall pay to the party grieued his treble dammages, ſuffer impriſonment three moneths, and find ſufficient ſurety for his good abearing for the ſpace of ſeuen yeres, or elſe remaine in priſon without baile or mainprize, vntill he hath found ſuch ſuretie. And it ſhall be lawfull for the partie grieued to take his further remedy againſt the offendor for his loſſe and dammages, and vpon ſatisfaction or confeſſion of the damages, to releaſe the offendor of the ſuretiſhip and good abearing at any time within ſeuen yeres. Stat. 5. Eli. 21

Oppreſſion by decaying of townes and houſes of husbandry.

33 I will draw toward an end of this title of Oppreſſion, with one of the greateſt and moſt durable of all Oppreſſions, viz. with oppreſſion by pulling downe of Townes, houſes of Husbandry, and decaying of Tillage. When the realme ceaſed to be oppreſſed by the long and tedious ciuile warres, which before were many yeres continued betweene the two houſes of Yorke and Lancaſter, and that king Edward the fourth had ouerthrowne queene Margaret and prince Edward her ſonne at Tewkſbury field, and ſetled the title of the Crowne, and planted peace in the realme, then ſome men of ſtirring ſpirits diuerting their bloody humors to couetous humors, pulled downe towns, and laid waſt houſes of husbandry, thruſting forth of doors men, women, and children, and conuerting the ſame to their owne priuate vſes: which offence then daily increaſing (though it were but in Cunabulis, being about 120. yers ſithence) was ſo bewailed, exclaimed of, & cried out vpon in open parliament, that the ſame may in a ſort be reſembled to the pitifull lamentation which the prophet Ieremy (ſitting downe weeping) made, after the temple of God and the city of Ieruſalem were deſtroyed, and the prieſts, Leuits and Elders ſlain by Nabuchadnezzar King of Babylon: Or the ſame may bee compared to thoſe woefull miſeries and calamities which the prophet Eſay foretold ſhould after fall vpon the ſaid great citie of Babylon: for as it appeareth by the ſtatute of Anno 4. H. 7. 12. & 19. & 7. H. 8. 1. it was then holden, That by the deſolation and pulling downe of houſes and towns, and laying to paſture land, which cuſtomably hath bin manured and occupied with tillage, idleneſſe (the ground and beginning of all miſchiefes) doth increaſe: men, women, and children, that were daily occupied, and liued by the ſowing of Corne, and breeding of Cattell, and other increaſe, were diminiſhed: husbandrie the greateſt commoditie of this Realme for ſuſtenance, was decayed, Churches were deſtroyed, the ſeruice of God was withdrawne, Chriſtian people there buried are not praied for, the Patrons and Curats were wronged, Cities and Market townes were brought to great ruine and decay, neceſſaries for mans ſuſtenaunce were made ſcarce and deare, the people of the Realme were ſore miniſhed, the power and defence thereof was feebled and decayed, to the high diſpleaſure of God, and againſt his lawes, and to the ſubuerſion of the Commonwealth, and deſolation of the ſame. Which grieuous and doleſull mone made, and enormities ſo diſplaied, the grand Counſell of this Realme hauing commiſeration vpon, did indeuour to reforme at ſeuerall parliaments: as appeareth by the ſtatute of Anno 4. H. 7. 12. & 19. Anñ 7. H. 8. 1. Anno 27. H. 8. 22. Anñ 5. E. 6. 6. Anno 2. & 3. P. & M. 8. & Anñ 5. Eliz. 2. which ſaid ſtatutes Threne 1. etc. Eſay 13. Stat. 4. H. 7. 12 Stat. 7. H. 8. 1.

were

Stat. 39. Eliz. 1 were all after repealed by a ſtatute made Anno 39. Eli. And then by the ſame ſtatute it was enacted, That euery houſe that now hath (viz. 24. die Octobris 39. Reg. Eliz. & Anno Dom. 1597.) or hereto-fore had twentie acres of arrable land, meddow, and paſture, or more thereunto belonging, and ſo occupied or letten to farme by the ſpace of three yeares together, at anie time ſithence the beginning of the Quenes raigne that now is (and which is not or hath not bene the caſtle or dwelling houſe of anie Nobleman or Gentleman, nor the chiefe manſion houſe of anie Manor) is and ſhall be adiudged a houſe of huſbandrie for euer: and all acres ſpoken of in this ſtatute, ſhall be adiudged acres according to the Statute or Ordinaunce de terris menſurandis. And euery perſon and perſons, bodies politike and corporat, which ſhall offend in not building, erecting, repairing, continuing, or maintaining of houſes of huſbandry, according to the purport and true meaning of the ſaid Statute, ſhall, for euerie houſe that ſhall not be erected, builded, repaired, continued or maintained in neceſſary reparations tenantable, according to the intent of the ſame Act, by the ſpace of one yeare, forfeit ten pounds, and ſo yerly ten pounds, vntill the ſame ſhall be ſufficiently erected, continued, repaired, &c. and for euerie acre of land, meddow, or paſture, which ſhall not be laid vnto, or let with ſuch houſes of huſbandrie, when the ſame ſhall be demiſed, ſhall forfeit for euerie yeere that he or they ſhall ſo offend, the ſumme of ten ſhillings, as long, and as often as ſuch acre ſhall not in thoſe reſpects be ordered and vſed according to the intent of this Act: of which forfeiture the king ſhall haue one part, the poore of the parith where the offence was commited the ſecond part, and he that will ſue in any of the kings courts of Record at Weſtminſter the third: and if none will ſue, then the king ſhall haue alſo that third part. But no offendor ſhalbe impeached or ſued by vertue of this act, except the ſuit be brought and commenced by the party for the king and himſelfe, within two yeares of the ſame offence done: but where the ſuit ſhall be proſecuted for the king onely &c. then within three yeares after the offence done.

which is an houſe of huſbandry.

which is an acre of land.

The forfeture for not building a houſe of huſbandrie.

within what time the ſuit ſhall be preſented.

Sta. 39. Eliz. 2 34 By the ſtatute of Anno 39. Eli. 2. it was ordained, That all lands and grounds which now are vſed in tillage, or for tillage, hauing bene tillable lands, fields, or grounds, ſuch as were before the firſt day of this parliament haue bene by the ſpace of twelue yeares together at the leaſt vſed in tillage, or for tillage, according to the nature of the ſoile, and courſe of huſbandrie vſed in that part of the countrey, ſhall not be conuerted to any ſhepe paſture, or to the grazing or fatting of cattell by the occupiers or poſſeſſors thereof, but ſhall according to the nature of that ſoile, and courſe of huſbandry vſed in that part of the countrey continue to be vſed in tillage, and for tillage for corne and grain, and not for wood. And if any perſon, body politique or corporat ſhall offend againſt the premiſſes, then the offendor ſhall forfeit for euery acre not reſtored or not continued, as is aforeſaid, ten ſhillings for euery yeare that he or they ſo offend, to be diuided into three parts, and then to be diſtributed as is aforeſaid, ſo that the ſuit be commenced or proſecuted within the time or times before mentioned. I haue for ſome ſpeciall cauſes herein ſet downe but onelie the offences and penalties mentioned in the two laſt ſpecified ſtatutes of Ann 39. Eliz. 1. & 2. omitting purpoſely the exceptions, reſeruations, proniſoes, and ſome other matters in the ſame.

Oppreſſion by decay of Tillage.

wherefore the two laſt Statutes be not ſet downe at large.

35 As Menaces, Aſſaults, Batteries, Impriſonments, Maihems, Riots, Routs, vnlawful Aſſemblies, Forgeries, Periuries, Maintenances, Deceits,

Extortions, Oppreſſions, and all other the crimes before mentioned, haue from one age to another béene noted and accuſed as maladies in the commonwealth, and adiudged and condemned as profeſſed enemies to the peace of the Realme, and by ſeuerall Lawes and Statutes diuers penalties haue béene impoſed vpon the tranſgreſſours thereof, in a meaſure certaine, and within ſome limites: So the prouidence of our forefathers ſounding déeper into the corruption of mans nature, and foreſéeing that ſometime his cholerike paſſions, and turbulent ſpirit, ſometime the gall and bitterneſſe of his heart, ſometime his couetous and inſatiable affections, and eftſoons his ſecret deſires and deuices of reuenge, doe carry him headlong into exorbitant and vnuſuall deſignements and practiſes, be they neuer ſo contrary to the Lawes of God, of Nature, and Reaſon, and in ſeuerall degrées further than our ſaid Lawmakers did then either forethinke, feare, or by particular words reſtraine: and knowing alſo, that the ſubtiltie of the Serpent (and of men of the Serpents nature) doth exceede the other beaſts of the field: haue therefore erected and eſtabliſhed the moſt honourable Court of Starre-chamber, to the intent that the wiſedome of the Court, authorized partly by the Kings prerogatiue, and partly by ſeuerall Lawes and Statutes of the Realme, might ſearch forth the Serpents ſubtiltie, and vtterly cruſh and daſh the ſame: and ſéeing the dead letter of each law doth ordaine in moſt caſes but one kinde of puniſhment for one ſort of offence, and the circumſpection of the makers of that Lawe (were they neuer ſo wiſe or experienced) could not foreſée al the circumſtances which in time might enſue in the manor of tranſgreſſing of that Law: Therefore the Lords and others of that high Court, being now the ſpeaking law, and repreſenting the perſons of the dead Lawmakers, and carefull expoſitors of their meanings, by their graue foreſights and déepe conſiderations doe looke into thoſe offences which be committed contrary to the ſame lawes, do ſearch into euery quarter, corner, and circumſtance thereof, and do pierce through the very bowels and intrailes of them, and the tranſgreſſors thereof: as what perſons, of what eſtate, degrée, abilitie, function, or calling committed the offence, to whom, in what manner, in what place, at what time, before whom, with what number, and for what cauſe the ſame was done, and then doe inflict puniſhment vpon the tranſgreſſors thereof, firſt according to the lawes and ſtatutes therefore prouided, and then doe qualifie or aggrauate the ſame, according to the circumſtances. As it is a Riot puniſhable by the ſtatute of Anno 13. H. 4. & Anno 2. H. 5. if three perſons, or more, do aſſemble together, and beate or maime a man, pull downe his houſe, pale, or ditch wrongfully &c. ſo if a great number of meane perſons, of ſmall abilitie or credit, ſhall aſſault a péere of the Realme, or a knight, or eſquire, that is Cuſtos Rotulorum of the ſhire, or a Juſtice of peace and Quorum in his Countrie, ſhall ſtrip and whip him, ſhall pull downe his houſe to the ground, ſhall ſet him in the ſtockes, or on the pillorie, ſhall beate his wife and children, kill his cattell, and ſpoile his corne before his face, and ſhall vſe other actes and wordes of infamie and diſgrace vnto him, and onely for that he did cauſe ſome lawfull puniſhment to be inflicted vpon certaine of them for their crimes: notwithſtanding all theſe or ſuch like miſdemeanours, be neither Treaſon nor Felony by the Law, but a Riot; and yet in reſpect of the baſeneſſe of the parties which committed this wrong, of the cauſe for the which they put it in practiſe, of the worthineſſe of the perſon, and of his place, vpon whom it was executed, of the barbarous courſe taken in the performance thereof, of the perillous example giuen to other malefactors, theſe riotors deſerue to be cenſured with a much ſharper puniſhment

All the former offences puniſhable in the Starre-chamber.

St. 13. H. 4. c. 7. Stat. 2. H. 5. 8.

niſhment then the former. For as there be no bounds obſerued by leud and wicked perſons of their outrages, ſo be there no certaine meanes or limits aſſigned of their puniſhments; but the ſaid moſt honorable Court of eſtate may draw forth his Maieſties ſword of iuſtice, and firſt puniſh the ſaid offences according to the particuler laws and ſtatutes prouided therefore, and then euery perſon tranſgreſſing by himſelf, according to the circumſtance of his demerits:
St.3.H.7.1. as partly may appeare by the ſtatute of anno 3.H.7. which explaneth ſome parts of the authoritie giuen to the Lords of the ſaid Court, and more by a
St.9.H.3.14. branch of the ſtatute of Magna Charta, whereby it is enacted, That euery freeman ſhall be amerced, viz. puniſhed for reaſonable cauſe, and according to the
St.33.H.8.1. quantitie of his offence. And further, by the ſtatute of Anno 33.H.8. which giueth the lords of the ſaid Court of Starre-chamber authoritie to puniſh thoſe, who by counterfeit letters or tokens ſhall get other mens goods into their hands, by impriſonment, ſetting vpon the pillory, or other corporal pain whatſoeuer (except death.)

Trea-

Treasons.

what is Treason.

1 CRimen læsæ Maiestatis, in our English tongue called Treason, is a great offence done to the Maiesty of gouernement & the peace of the land, which the wisdome of this Realme hath from age to age so much hated and abhorred, that they haue persecuted those that were guiltie therein, with most violent and untimely death, and with extreame and seuere torctures: they haue ordained, that an offendor therein shall be hanged, and cut downe aliue, that his bowels shall be cut off, and burned in his sight, that his head shall be seuered from his bodie, that his quarters shall be diuided asunder, and disposed at the Kings pleasure, and made fod for the birds of the aire, or the beasts of the field, and that his wife and children shall be thrust out of his house and linings, that his seed and blod shall be corrupted, that his lands and gods shall be confiscated, and (as by the statute of 29.H.6.1. it is ordained of the Traitor Iohn Cade) he shall be called a false Traytor for euer. And as our respectiue and considerat forefathers haue deuised to yeeld vnto those grieuous offendors Legem talionis, and to teare their bodies, lands, and gods, who doe practise to rent and pull asunder this Maiestie of gouernement, by destroying the head, or such as are like to be the principall succeeding members thereof, or by dividing the bodie into parts, or by weakning the force and strength thereof, or by subuerting the chiefe Magistrats of justice, or by counterfeiting, staining, or blemishing of the peculiar and royall Ensignes, Cognisances, and Sinewes thereof: so haue they bene carefull and prouident, that there should be no greater number of those dreadfull, sharpe, and bitter lawes, than vrgent necessitie, for the preseruation of that Maiestie of gouernement required. And because it was in former times greatly doubted, and ofttimes called in question amongst the Sages of the Realme, and learned in the lawes, which offences were by the common law high Treason, and which not, and which were petit Treason, and which not, and seuerall men were of seuerall opinions therein, and to the intent that all future ages might know, and be more vigilant to eschew the penalties thereof, King Edward the third at his Parliament begun at Westminster the thirteenth day of Januarie, in the 25. yere of his raign, at the request of his Lords, and petition of his Commons, made a declaration thereof in manner as hereafter followeth, viz. St. 25.E.3.2.

high treason.

It is high Treason where a man doth compasse, or imagin the death of our Soueraigne Lord the King, or of our Ladie the Quéene his wife, or of their eldest sonne and heire, or if a man doth deflower the Kings wife, or the Kings eldest daughter, being vnmaried, or the kings eldest sonne

and

and heires wife: or if a man doe leuie warre againſt our Lord the King in his Realme, or be adherent to the Kings enemies in his Realme, giuing to them aid and comfort in his Realme, or elſe where, and thereof be probably attainted of open deed, by people of their owne condition: And if a man do counterfeit the Kings great Seale, or his priuie Seale, or his money (which offences Bracton doth terme Crimen falſi) And if a man bring falſe money into this Realme, counterfeit to the money of England, knowing the mony to be falſe, to marchandize, or make paiment, in deceit of our Lord the King, and his people: And if a man kill the Chauncellor, Treaſurer, or the Kings Juſtice of the one Bench or the other, Juſtices of Eire, and of Aſſiſes, and all other Juſtices aſſigned to heare and determine, being in their places doing their Offices. And it is to be vnderſtood, that in the caſes aforeſaid it ought to be adiudged Treaſon, which extendeth to our Lord the King and his royall Maieſtie. And of ſuch Treaſon the forfeiture of the eſcheat doth appertaine to our Lord the King, as well of the lands and tenements holden of others, as of himſelfe. And moreouer there is an other manner of Treaſon, that is to ſay, When a ſeruãt killeth his Maſter, or a wife her husband: or when a ſecular or religious man killeth his Prelat, to whom he oweth faith and obedience. And ſuch manner of Treaſon giueth the eſcheats to euery Lord of his owne fée. And becauſe many other caſes of like Treaſon may happen in time to come, which a man cannot thinke of, nor declare at this preſent: It is accorded, that if any other caſe ſuppoſed to be treaſon, that is not before ſpecified, doth happen of new before Juſtices, the Juſtices ſhal ſtay without proceeding to iudgement of Treaſon, vntill the caſe be declared and ſhewed before the King and his Parliament, whether it ought to be adiudged Treaſon, or other Felonie. And in caſe any man of this Realme doe ride armed, openly or ſecretly, with people armed, againſt an other, for to kill or rob him, or to take and detaine him vntill he hath made fine and ranſome to be deliuered, it is not the King or his Counſels will, that in ſuch caſe it ſhall be adiudged Treaſon, but it ſhall be adiudged Felonie or Treſpaſſe, according to the law of the land in auncient time vſed, and according as the caſe doth require. And if in ſuch caſe, or any like, the Juſtices haue adiudged it Treaſon before this time, and thereby the offendors lands and tenements haue come into the kings hands as forfeit, the chiefe Lords of the fée ſhall haue their eſcheats of thoſe tenements which be holden of them, whether the ſame tenements be in the hands of the King, or of any other, by gift, or in other manner (ſauing to our Lord the King the yeare and waſt, and the forfeiture of the chattels which do belong vnto him in the caſes aforeſaid.) And in ſuch caſes writs of Scire facias ſhal be awarded againſt the tenants of the land, without any other originall, and without allowing the kings protection in the ſame ſuit. And touching thoſe lands which be in the kings hands, there ſhalbe writs granted to the Shirifes of the Counties where the lands be, to deliuer them out of the kings hands without delay.

Bracton de Corona, cap. 3.

Petit treaſon.

2 By which ſtatute it doth appeare that there be two ſorts of Treaſon by the auncient common lawes of this Realme, viz. High Treaſon, and Petit Treaſon: High Treaſon when any of the grieuous offences aforeſaid be done, or attempted to the vniuerſall and generall Maieſtie of gouernment, that is to ſay, to the bodie of the whole Commonwealth, or to the King, the head, ruler, and directer thereof, in his perſon, wife, iſſues, or authoritie. Petit Treaſon is when the bloudie and grieuous offence of wilfull murder is done and committed by an inferiour perſon, and one in ſubiection to an other, that hath a dominion

High treaſon.

Petit treaſon.

minion, or a kind of Princkly in gouernment ouer the same partie. And though sithence the before mentioned Statute of 25. Ed. 3. diuers other offences haue beene made Treason by the Statutes of 21. R. 2. 3. H. 5. 4. H. 5. 8. H. 6. 14. H. 6. 20. H. 6. 4. H. 7. 22. H. 8. 26. H. 8. 27. H. 8. 28. H. 8. 31. H. 8. 32. H. 8. 33. H. 8. 35. H. 8. and 1. Ed. 6. yet euery of the succeeding ages were some wearie of the said new Treasons, and thought that the grieuous paines and most hainous punishments of them were too heauy and vnsupportable for the Subiects of this Realme to endure. As the Lords and Commons in the Parliament holden Anno 4. H. 4. 10. did complaine, that diuers paines were ordained to be Treason by the statute of 21. R. 2. insomuch that no man did know how he ought to behaue himselfe, to doe, to speake, or say, for doubt of such paines: and thereupon it was enacted, That in no time to come any treason shall be abridged otherwise, than was ordained by the Statute of 25. Ed. 3. And long time after, the makers of the statute of Anno 1. Mar. considering and rehearsing, that the state of euerie King, Ruler, and Gouernour of any Realme, Dominion, or Comminaltie, consisteth more assured by the loue and fauour of the subiects towards their Gouernour, than in the dread and feare of Lawes made with rigorous paines, and extreame punishment: and that lawes iustly made for the preseruation of the Commonwealth, without extreame punishment or great penaltie, are more often obeyed and kept, than lawes and statutes made with great and extreame punishments: and in speciall such lawes and statutes so made, whereby not only the ignorant, vnlearned, and rude people, but also learned and expert persons minding honestie, are often trapped and snared, yea many times for words only, without any other fact or deed done or perpetrated: and therefore to the intent that the seueritie of such like extreame, dangerous, and perillous lawes might be abolished, and annulled, by the said statute of Anno 1. Mar. Parl. 1. it was ordained, That from thenceforth none act, deed, or offence, being by act of Parliament or stat. made Treason, petit Treason, or Misprision of Treason, by words, writing, ciphering, deeds, or otherwise whatsoeuer, shal be taken, had, deemed, or adiudged to be high Treason, petit Treason, or misprision of Treason, but only such as be declared & expressed to be high Treason, petit Treason, or misprision of Treason, in or by the statute of 25. Ed. 3. concerning Treason, or the declarations of Treasons, and none other: Nor that any paines of death, penalty, or forfeiture in any wise ensue, or be to any offendor or offendors, for the doing or committing of any Treason, petit Treason, or misprision of Treason, other than such as be in the said stat. of 25. Ed. 3. ordained and prouided, By force of which statute made Anno 1. M. the Subiects of this Realme were eased and vnburdened of all acts, deeds, & offences, made or declared to be Treason, by the space of two hundred and more yeares before: Or as it may more aptly be said of all offences made Treason by any statute or Act of parliament whatsoeuer. But sithence the statute of repeal made Anno 1. M. there haue been diuers other offences made or declared to be Treason by the stat. of Añ 1. M. 6. 1. & 2. P. & M. 11. 5. El. 11. 18. El. 1. 5. El. 1. 13. El. 2. 23. El. 1. 27. El. 2. and 3. Iac. 4. whereof the first foure were but as an addition, augmentation, enlargement, or exposition of the before specified Treasons ordained by the common law, or declared by the forsaid statute of 25. Ed. 3. All which said last mentioned Treasons I will set downe and expresse verbatim, after I haue somewhat more particularly expressed how the Sages & Iudges of this Realme haue construed and expounded seuerall braunches of the said statute of explanation made Añ 25. Ed. 3.

St. 4. H. 4. 10.

A repeall of former treasons.

St. 1. M.

Offences made treason by Statutes.

3 The foresaid statute of 25.Ed.3. doth confirme it to be high Treason for any person to compasse or imagine the death of our soueraigne Lord the King, the Quéne, &c. by which words it doth approue what a great regard and reuerend respect the common law hath alwaies had to the person of the K. which it hath endeuored religiously and carefully to preserue, as a thing consecrated by almightie God, and by him ordained, to be the head, health, and wealth of the kingdome, and therefore it hath ingrafted a deepe and setled feare in the hearts of all sorts of subiects, to offer violence or force vnto it, vnder the paine of high treason; in somuch as if he that is non compos mentis do kill, or attempt to kill the K. it shalbe adiudged in him high treason, though if he do commit petit treason, homicide, or larceney, it shall not be imputed vnto him as felonie, for that he knew not what he did, neither had he malice prepenced, nor a felonious intent. And this law doth not only restrain al persons from laying violent hands vpon the person of the K. but also by preuentiō it doth inhibit them so much as to compasse or imagin, or deuise or thinke in their hearts to cut off by violent or vntimely death, the life of the K. Qu. &c. for the only compassing or imagination, without bringing it to effect, is high Treason, because that compassing & imagination doth proceed from false and traiterous hearts, and out of cruell, bloudy, and murdering minds. But seeing compassing and imagination is a secret thing hidden in the breast of man, and cannot be known but by an open fact or deed, it is requisit to haue some thing or means to notifie the same to others before it can be discouered and punished: and therefore if it be vttered by words it is a sufficient signification thereof. If two, three, or more doe conspire to commit high Treason, as to compasse or imagine the kings death, or to leuie war, and some of them after do commit and execute it, this is high Treason in them all by the common law.

Leges Alured. cap. 4. Co. lib. 4. 124.

Bracton de Corona cap. 3.

Compassing or imagining the death of the King.

26.H.6.47. 13.H.8.13. Co. li. 1. 28.

P. 1. M. Dyer 98. Co. li. 1. 28.

Conspiracie by diuers, executed by some of them.

4 And because by the said statute of 25.Ed.3. it is declared to be high Treason, to leuie warre against the king in his Realm, or to be adherent to his enemies, aiding them in his Realme, or elsewhere: therefore if a subiect borne of this Realme being beyond the seas, doth practise with a prince or gouernor of an other countrey to inuade this Realme with great power, and doe declare, where, how, and by what meanes the inuasion may best be made, it is high Treason: for an inuasion with great power cannot be, but of likelyhood it will tend to the destruction or great perill of the K. and hurt to the Realme: & moreouer the said offendor hath manifested himselfe to be adherent to the K. enemy and to aid him with his counsel, though not in the Realme, yet elsewhere. And this offence shalbe tryed in the K. Bench, or elsewhere, before such commissioners, and in such countie, as the king by commission shall appoint, according to the stat. of 35.H.8.2. If a man do confederat with others to destroy the King, subuert the realme, and to aduance a rebell to be king, and doe indeuor by such friends & means as he can to put the same in practise, this is high Treason, and he shall suffer death, & forfeit, as in case of high Treason. And if a man accompanied with a conuenient number of persons, do ride towards the king, to help him in his wars, & another doth encounter him, and kil him, this is high Treason, for he doth leuie warre against the king, who doth encounter in fight such as be assisting to the king in his wars, and he is adherent, and giueth comfort to the K. enemies, who in open field giueth battell to the K. friends, for taking the K. part. Before the foresaid stat. of 25.Ed.3. it was adiudged Treason to kill the Kings messenger, who was sent to execute his commaundement.

Leuying of warre, or adhering to the K. enemies.

13.Eliz. Dyer 298.

The tryall of his offence.

Co. li. 1. 28.

21.Ed.3.23.

22.Ass. pl. 49.

5 And

Counterfeiting the kings Seale.

5 And though the words of the foresaid stat. of 25. Ed. 3. be, That it is High Treason for a man to counterfeit the K. great seale, or his privie seale, yet the law doth construe it a counterfeiting of the great seal, to take the ware printed with the great seale, to affixe it to a writing made in the K. name, and to use it as the kings commission, to gather money of the kings people, though this is not making or counterfeiting of a new seale, but the abusing of an old seale, to remove it from one Patent to an other, and thereby to abuse the K. prerogative and authoritie, and to exact money of his subiects. And so though the letter of the law be not infringed, yet the meaning of the law, which is the essence and substance of the law, is broken; wherefore the offendor shalbe punished in this case as a traitor: And yet when a Chaplein had affixed an old seale of the kings to a Patent of Non-residence, it was adiudged but Misprision of treason, and not High treason. And notwithstanding that in the foresaid stat. of 25. Ed. 3. there is no mention made of any consenters or aiders to this counterfeiting, yet the consenters and aiders be taken to be within the purview of this stat. for in that they be aiders and consenters to a treason, they be offendors, and in treason all the offendors be principals, and noe accessarie, and therefore they be principall traitors in this fact.

2. H. 4. 28. 40. Ass. p. 33.

Ao 37. H. 8. Br. Treason 3.

Consenters and aiders to Treason.

19. H. 6. 47.

Counterfeiting, but not vttering of false money.

6 And whereas it appeareth by the foresaid stat. of Anno 25. Ed. 3. that if a man do counterfeit or forge the K. money, it shall be Treason; the meaning of the said law is, that the counterfeiting or forging of the sayd money, shall be construed and expounded Treason, although the offendor doth not vtter the same in paiment: for the K. by his prerogatiue royall, hath the onely authority to coyne money, and to make the price or value of the quantitie thereof, and to set a seale thereupon. But if false mony be made within the Realm, in Ireland, or any the Dominions thereof, and an other knowing thereof doth vtter it in payment, he committeth not high Treason, but misprision of treason. And the receiuing, helping, and comforting of him which hath coyned money of false mettall like to the money of England, knowing him to haue coyned it, is but misprision of treason. A woman that did coine money before the foresaid stat. of 25. E. 3. was adiudged a traitor, & burned for the same, which doth proue, that the said offence, amongst the others before rehearsed, was high treason by the common Law, and not newly ordained by that stat. If he which doth coine money by the kings warrant in the Tower of London, or elsewhere, maketh it lesse in weight by much than the old and antient ordinance, or coyneth false mettall, it is high Treason in him: But yet they which do vtter it in paiment to the K. subiects within the Realme be not Traitors, for it is in them onely Misprision of Treason.

6. H. 7. 13. 1. R. 3. 1.

3. H. 7. 10. 11. Eliz. Dyer 266.

23. Ass. p. 2.

He who coyneth money by warrant doth abuse it.

3. H. 7. 10.

Petit Treason.

A seruant killeth his Master or Mistresse.

7 And whereas the words of the foresaid stat. of 25. E. 3. be, That there is an other maner of Treason, when a seruant killeth his Master, &c. although there be therein no mention made of the Mistresse; yet if a man or a woman seruant do kill his or her Mistresse or Dame, it is petit Treason, & within the purview and meaning of the said stat. though it be not within the letter thereof, and it was petit Treason by the common law: for the seruant is retained to serue as well the one as the other, and to be obedient as well to the one as to the other, & one of them hath affiance in the seruant as well as the other. And if a seruant kill his Master after he is out of seruice, if it be vpon a premeditat malice conceiued against him during the time that he was in seruice, it is petit Treason: for the execution of the fact doth respect and looke backe to the origi-

19. H. 6. 47. 12. Ass. p. 30.

33. Ass. p. 7. Co. lib. 1 99.

nall

malt cause, which was the malice the seruant conceiued against his Master when he was his seruant. If a seruant do procure one to kill his Master, who doth kill him in the seruants presence, this is petit Treason in the seruant: but if he do kill him in the seruants absence, then is it not petit Treason in the seruant, but he is accessory to murder. A woman seruant conspired with a stranger to rob her Mistresse, and at a time appointed in the night she did let him into the house, and led him to the bed with a candle, where her Mistresse lay sleeping, & the same stranger killed her Mistresse in her bed, the seruant saying or doing nothing but holding the candle: in this case the seruant committed petit Treason, and was adiudged a principal therein, though the party who did the bloudy fact, was but a murderer. If a wife and a seruant do conspire to kill the husband, and appoint a time and place for it, & the seruant killeth the husband in the wiues absence, this is petit Treason in them both, though the wife be absent: and yet the law is otherwise if he be not a seruant, but a stranger: for if a woman procure a stranger to kill her husband, which he doth in her absence, she shall be hanged and not burned, for that the principall offendor was a Murderer, and not a Traitor, as the seruant was in the former case. And so abettors & procurers, be within this part of the statute touching petit Treason, although they are not expressly named within the letter of the statute.

40. Ass. p. 25.

2. & 3. P. & M. Dy. 128.

P. 16. Eliz. Dyer 332.

The wife conspireth with an other to kill her husband.

4. Ass. p. 25.

Abettors and procurers in petit Treason

21. Ed. 3. 17.

8 Some do affirme it to be petit Treason in the sonne, or daughter, to kill the Father or Mother, and some others doe not thinke it to be so, vnlesse the father or mother do at the same time giue meat and drinke to that sonne or daughter which doth kill him, or her, as to a seruant, and so, that the Treason should be in respect of the dutie of seruice broken, and not of duties of nature violated.

The son killeth father or mother.

1. H. 6. 5.

9 It is Petit Treason if a man outlawed of felonie, and imprisoned in the K. Bench, be attainted for breaking of prison, and letting at libertie such persons as were there imprisoned for Treason, and the offendor shalbe drawn and hanged. And it hath beene adiudged petit Treason in some age, and felony in an other age, for one of the Indictors to discouer the K. counsell and his fellowes: but sithence it hath beene taken onely as finable to the King.

Breaking of prison.

27. Ass. p. 68.

8. Felonie &c. 15.

An Indictor doth discouer counsell.

10 Besides the before mentioned offences which be explained to be Treasons by the common Lawes of this Realme, and besides al the offences aforesaid, which were made Treason by the seuerall stat. before rehersed, and after repealed by the foresaid statute of An. 1. M. there haue beene sithence that time seuerall other offences made high Treason by seuerall statutes which I will set downe in order as they were made, and, as neere as I can gather, expresse the causes why they were made. For as much as by the lawes of this Realme small and no due and condigne punishment was before prouided for such euill disposed persons, as shold counterfeit or forge such kind of gold or siluer of other realms, as is not the proper coine of this realme, & yet vsuall by the Queens consent, & heretofore suffered by her progenitors to be current in paiment within this realme: nor for such persons as shold counterfeit the Queens signe manuall, her priuie signet, or her priuie seale, therfore by a stat. made An. 1. M. 6. it was enacted, That if any person or persons shall hereafter falsly forge or counterfeit any such kind of gold or siluer, as is not the proper coine of this realme, & is or shalbe current within this realme by the consent of the Q. her heires or successors: or if any person or persons at any time hereafter, doe falsly

Treasons by Statutes.

Stat. 1. M. 6.

Forging the Coines of other Realmes current in this Realme.

Forging the kings ſignet Manuall, &c.

forge or counterfeit the Qu. ſigne manuall, priuie ſignet, or priuie ſeale, that then euery ſuch offence ſhal be deemed and adiudged high Treaſon, and the offendors therein, their counſellors, procurers, aiders, and abettors, being conuict according to the lawes of this realme, of any the ſaid offences, ſhall be likewiſe deemed and adiudged Traitors againſt the Qu. her heires and ſucceſſors, and the realme, and ſhall ſuffer and haue ſuch paines of death, forf. of lands, goods, and cattels, and loſe the priuiledge of all Sanctuarie, as in caſe of high Treaſon is vſed and ordained.

Bringing in of counterfeit money.

11 Where ſundrie coynes of gold and ſiuer of other realms, not being the proper coins of this realme of England, and by the ſufferance of the K. and Q. be currant in paiment within this realm, many euill diſpoſed perſons for their owne corrupt lucre, did bring into this Realme from the parts beyond the ſea, great quantitis of forged and counterfeit Money, like to the ſaid coins of other forreine Realmes, and did vtter the ſame by marchandizes, and otherwiſe, to diuers ſubiects of this Realme, to their great damage, for that there was not any ſufficient law then prouided for the condigne puniſhment of the offendors in that behalfe, therefore by a ſtatute made Añ 1. & 2. P. & M. it was eſtabliſhed, That if any perſon or perſons ſhall bring from the parts beyond the Sea into this Realme, or into any of the dominions of the ſame, any ſuch falſe and counterfeit coine of money being currant within this Realme, as is aforeſaid, knowing the ſame coine or money to be falſe and counterfeit, to the intent to vtter or make payment with the ſame within this Realme, or any the dominions of the ſame, by marchandizing, or otherwiſe, then all and euery ſuch perſon or perſons ſo offending, as is aforeſaid, their counſellors, procurers, & abettors, aiders in that behalf ſhalbe deemed & adiudged to be offendors in high Treaſon, & ſhall ſuffer (after lawfull conuiction or attainder thereof) ſuch paines of death, loſſe, and forf. of lands, goods, & cattels, as other offendors ſhall do in caſes of high Treaſon. And all and euery perſon and perſons, that ſhall be accuſed or impeached of any of the offences contained and prouided for in this ſtatute, or of any other offence or offences, concerning the impairing, counterfeiting, or forging of any Coine currant within this realme, ſhall and may be indicted, conuicted, or attainted by ſuch like euidence, and in ſuch manner & forme, as hath bẽ vſed within this Realme at any time before Añ 1. Ed. 6. Any ſtatute, cuſtome, law, &c, notwithſtanding. Sta. 1. & 2. P. & M. 11.

By what euidence an offendor ſhall be indicted or attainted.

Clipping, waſhing, rounding, or filing of money.

12 Becauſe diuers falſe and euill diſpoſed perſons, for wicked lucre & gaine ſake, did diminiſh, impaire, and falſifie the money and coynes currant within this Realme, by clipping, waſhing, rounding, and filing thereof, to the diſhonour of the Quẽne, and loſſe of the ſubiects of this Realme: for the remedy whereof by a ſtat. made Añ 5. El. it was enacted, That clipping, waſhing, rounding, or filing for wicked lucre or gaines ſake, of any the proper Monies or Coines of this realme, or the dominions thereof, or of the monies or coines of any other realme, allowed and ſuffered to be currant within this realme, or the dominions thereof, at this preſent, or that hereafter at any time ſhall be the lawfull monies or coines of this Realme, or the dominions thereof, or of any other Realme, and by proclamation allowed and ſuffered to be currant here, by the Quẽne, her heires or ſucceſſors, ſhall be taken & adiudged by vertue of this act to be Treaſon: and the offendors therein, their counſellors, conſenters, & aiders, ſhal be taken, deemed, & adiudged as offendors in Treaſon: and being thereof lawfully conuicted or attainted, according to the due order of the law, Sta. 5. Eliz. 11

ſhall

shall suffer death, and lose and forf. all his and their goods and cattels, and also shall lose and forf. all his and their lands and tenements, during his and their naturall life or lives onely. And every person which hath any lawfull grant to haue and enioy the forf. of lands, goods, or cattels of offendors, and men attainted of high treason, within any Manor, Lordship, Towne, Parish, Hundred, or other precinct within this realme of England or Wales, shall & may at all times hereafter, haue like libertie, to take, seise, and enioy all such forf. of lands, tenements, goods, and cattels, as shall come or grow within their liberties, by force of the attainder of any person or persons, for and vpon any offence and offences made Treason by this act, as they or any of them should, ought, or might by vertue of any good and lawfull grant to them or any of them heretofore had or made. Prouided alwaies, and be it enacted, That this act, nor any attainder or attainders of any person or persons, for any offence or offences made Treason by this act, shall extend or be expounded, to make any corruption of blood to any the heire or heires of any such offendor or offendors, or to make the wife of any such offendor to lose or forf. her dower, of, or in any lands, tenements, or hereditaments, or her title, action, or interest in the same: Any thing in this act contained, or attainder &c. notwithstanding. If any of the Lords of the Parliament, or Peare of the realme, shall be indicted of any offence made treason by this act, then they shall haue their triall by their Peares, as heretofore hath beene vsed in cases of high Treason. By a stat. made Ann 3. H. 5. it was ordained, That clipping, washing or filing of the money of the land, should be adiudged Treason, but that stat. was repealed by the before rehearsed statute of An. 1. M. as is aforesaid.

To whom the forfeiture shall accrue.

No corruption of blood, or forf. of dower.

Triall of a Peare.

St. 3. H. 5. 6.

13 For that diuers euill disposed persons knowing that the said act of Ann 5. El. 11. being penall, ought to be expounded strictly according to the words thereof, and the like offences not by any equity to receiue the like punishment, did sithence the making of the said stat. practise for gaines sake, other vndue means, to falsifie, impaire, diminish, and lighten as well the proper mony of this realm, as also of other realmes, allowed to be currant within this realme & the dominions thereof by the Queenes proclamation, to the great losse and deceit of the Q. and her subiects: for the redresse whereof by a Statute made Ann 18. Eliz. it was established, That if any person or persons shall for wicked lucre or gaines sake, by any act, waies, or means whatsoeuer, impaire, diminish, falsifie, scale, or lighten the proper monies or coynes of this Realme, or any the Dominions thereof, or the monies or coines of any other Realmes, allowed and suffered to be currant, at the time of the offence committed, within this Realme of England, or any the Dominions of the same, by the proclamation of the Queenes heires or successors, it shall be taken, deemed, and adiudged to be Treason: and the offendors therein, their counsellors, consentors, and aydors, shall be likewise deemed and adiudge as offendors in treason, and being thereof lawfully conuict or attainted, according to the due course of the laws of this realme, shall suffer death, and lose and forf. all their goods and cattels, to the Queene, her heires and successors, and shall lose and forfeit to the Queene, her heires and successors, all their lands, tenements, and hereditaments, during his or their naturall life or lives onely. Prouided alwaies, that this Act, nor any attainder or attainders, for any offence or offences made Treason by this Act, shall in any wise extend, or be iudged, or expounded, to make any corruption of blood to any the heire or heires of such offendor or offendors, or to make the wife of any such offendor to lose or forfeit the dower, of, or in any lands,

Diminishing, scalling, or lightning of money.

St. 18. El. 1.

No corruption of bood, or forf. of dower.

tenements, or hereditaments, or her title, action, or intereſt in the ſame: Any thing in this Act contained, or any attainder hereafter to be had &c. notwithſtanding. If any Lord of the Parliament, or Peere of this Realme, ſhall be indicted of any offence made Treaſon by this Act, then euery of them ſhall haue his triall by his Peers, as hath been heretofore vſed in caſes of High Treaſon.

Triall of a Peere.

14 For preſeruation of the Quænes Highneſſe, her heires and ſucceſſors, and the dignitie of the Imperiall Crowne of this Realme, and for auoiding of ſuch hurts, perils, diſhonors, and inconueniences, as haue before time fallen as well to the Nobls progenitors, Kings of this Realme, as for the whole eſtate thereof, by meanes of iuriſdiction & power of the Sea of Rome, vniuſtly claimed and vſurped within this Realme, and the dominions thereof, and alſo of the damages by the factors of the ſaid vſurped power, growne to licencious boldneſſe, and marueilous outrage: by a Statute made Anno 5. El. it was ordai- Sta. 5. Eliz. 1.

Maintaining the authoritie of the Biſhop of Rome.

ned, That if any perſon or perſons, dwelling, inhabitant, or reſiant within this Realme, or within any other the Qu. dominions, ſeignories, or countries, or in the Marches of the ſame, or elſewhere, within or vnder her obedience and power, of what eſtate, dignity, preheminence, order, degrée, or condition ſoeuer hée or they be, ſhall by writing, ciphering, printing, preaching, or teaching, déed, or actes, aduiſedly and wittingly, hold, or ſtand with, to extoll, ſet forth, maintaine, or defend the iuriſdiction, or power of the Biſhop of Rome, or of his Sea, heretofore claimed, vſed, or vſurped within this Realme, or in any dominion or countrey, being of, within, or vnder the Quænes power, or obedience: Or by any ſpeech, open déed, or act, aduiſedly and wittingly, attribute any ſuch manner of iuriſdiction, authoritie, or preheminence, to the ſaid Sea of Rome, or to any Biſhop of the ſame Sea for the time being, within this Realme, or in any the Qu. dominions or countries, Then euery ſuch perſon or perſons ſo doing or offending, their abettors, procurers, and counſellors, and alſo their aidors, aſſiſtants, & maintainors, vpon purpoſe, and to the intent to ſet forth, further, and extoll the ſaid vſurped power, authoritie, or iuriſdiction of any of the ſaid Biſhop or Biſhops of Rome, and euery of them, being therof lawfully indicted or preſented, within one yeare next after ſuch offences by him or them committed, and being lawfully conuicted or attainted at any time after, accor-

The penaltie for the firſt offence.

ding to the Lawes of this Realme, for euery ſuch default & offence, ſhall incurre the daunger, penalties, paynes, and forfeitures ordeyned and prouided by the Statute of Prouiſion and Præmunire, made Anno 16. R. 2. And for ſtronger Sta. 16. R. 2. 5.

The ſecond offence Treaſon.

defence and maintenance of the ſaid Act, it was further eſtabliſhed by authoritie of the ſaid Parliament, That if any ſuch offendor or offendors, as is afore-ſaid, by writing, ciphering, printing, preaching, or teaching, déed, or act, aduiſedly, and wittingly, do hold, or ſtand with, to extoll, ſet forth, maintaine, or defend the authoritie, iuriſdiction, or power, of the Biſhop of Rome, or of his Sea heretofore claimed, vſed, or vſurped within this Realme, or in any Dominion or Countrey, being of, within, or vnder the Quænes power or obedience: Or by any ſpeech, open déed, or act, aduiſedly and wittingly, attribute any ſuch manner of iuriſdiction, authoritie, or preheminence to the ſaid Sea of Rome, or to any Biſhop of the ſame Sea for the time being, within this Realme, or in any the Quænes Dominions or Countries, or bee to any ſuch offendor or offendors abetting, procuring, or counſelling, or ayding, aſſiſting, or comforting, vpon purpoſe, and to the intent to ſet forth, further, and extoll the ſaid vſurped power, authoritie, or iuriſdiction, after ſuch conuiction and attainder, as is aforeſaid, do eſtſoones commit or do the ſaid offences, or any of them,

them, in manner and forme aforeſaid, and bée thereof duelie convicted and attainted, as is aforeſaid, then euery ſuch offendor and offendours, for the ſame ſecond offence and offences, ſhall forfeit, loſe, and ſuffer ſuch like and the ſame paines, forfeitures, iudgement, and execution, as is vſed in caſe of high Treaſon. Prouided alwayes, that this Act nor anie thing therein contained, nor any attainder to bée had by force of this Act, ſhall not extend to make anie corruption of blood, the diſheriting of anie heire, forfeiture of dower, nor to the preiudice of the right or title of anie perſon or perſons, other than the right and title of the offendor or offendors, during his, her, or their naturall liues onely. And it ſhall and may be lawfull, to euerie perſon and perſons, to whom the right or intereſt of anie lands, tenements, or hereditaments, after the death of ſuch offendor or offendors, ſhould or might haue appertained, if no ſuch attainder had béene, to enter into the ſame, without anie Ouſter le maine to be ſued, in ſuch ſort as hée or they might haue done if this Act had neuer béene made. Prouided, that charitable giuing of reaſonable almes to anie of the offendor or offendors aboue ſpecified, without fraud, or couin, ſhall not be taken and interpreted to be any ſuch abetment, procuring, counſelling, aiding, aſſiſting, or comforting, as thereby the giuer of ſuch alms ſhall incurre any paine, penaltie, or forfeiture appointed in this Act. Prouided alſo, that if any Péere of this realme ſhall offend contrarie to this Act, or any Braunch or Articls thereof, in all ſuch caſes they ſhall be tried by their Péeres, in ſuch manner and forme as in other caſes of treaſon they haue vſed to be tried, and by none other meanes. No perſon or perſons ſhall be indicted for aſſiſting, aiding, maintaining, comforting, or abetting of anie perſon or perſons, for any the ſaid offences, in extolling, ſetting forth, or defending of the vſurped power and authority of the biſhop of Rome, vnleſſe he or they be lawfully accuſed by ſuch good and ſufficient teſtimony & proofe, as by the Iury by whom he ſhall be indicted, ſhall be thought good, lawfull, and ſufficient to proue him or them guiltie of the ſaid offences.

No corruption of blood, or forf. of dower.

Giuing of almes to an offendor.

15 To the intent that all vſurped and forreine power & authoritie ſpirituall and temporall, may for euer be cléerely extinguiſhed, & neuer to be vſed or obeied within this Realme, or any other the Q. Dominions, by a ſtatute made Añ 1. El. 1. it was ordained, That no forrein Prince, perſon, prelate, ſtate, or potentate, ſpirituall or temporall, ſhall at any time after the laſt day of this Seſſion of Parliament, vſe, inioy, or exerciſe any manner of power, iuriſdiction, ſuperioritie, authoritie, préheminence, or priuiledge Spirituall or Eccleſiaſticall within this Realme, or any other the Quénes Dominions or Countries that now be, or hereafter ſhall be: But from henceforth the ſame ſhall be cléerely aboliſhed out of this Realme, and all other the Q. Dominions for euer: any ſtatute, ordinance, cuſtome &c. notwithſtanding. And for the better obſeruation & maintenance of the ſaid Statute, it was then further enacted, That all and euery Archbiſhop, Biſhop, and all and euery other Eccleſiaſticall perſon, and other Eccleſiaſticall Officer and Miniſter, of what eſtate, dignitie, préheminence, or degrée ſoeuer he or they be, or ſhall be, and all & euery Temporall Iudge, Iuſtice, Maior, and other lay and temporall Officer and Miniſter, and euery other perſon hauing the Quénes fées or wages within this Realme, or any of her Dominions, ſhall make, take, and receiue a corporall Oath vpon the Euangeliſts, before ſuch perſon or perſons as ſhall pleaſe the Quéene, her heires or ſucceſſors to aſſigne & name, to accept & take the ſame oath. And euery perſon that at any time ſhal be preferred, promoted, or collated to any Archbi-

8 El. 1. Eliz. 1.

Abolishing of forreine authoritie.

Who ſhal take the Oath for the Quénes ſupreame gouernment.

ſhopzicke or Biſhopzicke, or to any other Eccleſiaſticall benefice, pzomotion, dignitie, office, or miniſtrie, or that ſhall be by the Quéene, her heires or ſucceſſors, pzeferred to any tempozall or lay office, miniſtrie, or ſeruice, within any her Dominions, before he ſhall take upon him to receiue, vſe, exerciſe, ſupplie, or occupie any ſuch Archbiſhopzicke, Biſhopzicke, pzomotion, dignitie, office, &c. ſhal receiue the ſame Oath before ſuch perſons as ſhal haue authozitie to admit any ſuch perſon to any ſuch office, &c. or elſe before ſuch perſon or perſons as by the Quéene &c. vnder the great Seale, ſhall be aſſigned to miniſter the ſaid Oath. And euery perſon Tempozall ſuing liuerie, or Ouſter le maine out of the hands of the Quéene, her heires or ſucceſſors, before his liuery or Ouſter le maine ſued forth, and allowed: And euery Tempozall perſon doing any homage to the Quéene, her heires and ſucceſſors: or that ſhall be receiued into ſeruice with her, &c. ſhal take the foreſaid corporal Oath before the Lord Chancellor, or Keeper of the great Seale, or before ſuch perſon or perſons, as by the Quéene &c. ſhal be appointed to receiue the ſame. And euery perſon taking orders, and euery other perſon which ſhal be pzeferred to any degrée of learning, in any Vniuerſitie within this Realme, or dominions, before he ſhall receiue ſuch orders, or be pzeferred to ſuch degrée of learning, ſhall take the forezayd oath before his Ozdinary, Commiſſary, Chancellor, or Vicechancellor, or their ſufficient deputie in the ſaid Vniuerſity. And by an other ſtat. made Añ 5. El. it was further enacted, That all other perſons which haue taken or ſhall take orders, commonly called Ordines ſacros, or Eccleſiaſticall orders, or haue béen or ſhal be pzomoted, pzeferred, or admitted to any degrée of learning in any Vniuerſitie within this Realme, or dominions to the ſame belonging: And all Schoolmaſters, and publique and pzinat teachers of children, as alſo all maner of perſon and perſons that haue taken, or hereafter ſhal take any degrée of learning, in, or at the common Lawes of this Realme, as well Vtter-barreſters, Benchers, Readers, Ancients in any houſe or houſes of court, and al pzincipal Treaſurers, and ſuch as be of the graund companie in euery Inne of Chancerie, and all Attorneies, Pzothonotaries, and Philozers, towards the Lawes of this Realme: And all manner of Shiriffes, Eſcheators, & Feodaries, and all other perſon and perſons, which haue taken, or ſhall take vpon him or them, or haue béen, or ſhal be admitted to any Miniſtrie or Office, in, at, or belonging to the common law, or any other law or laws, of, to, or for the execution of them, or any of them, vſed or allowed, or at any time hereafter to be vſed or allowed within this Realme, or any the Dominions or Countries belonging, or which hereafter ſhall happen to belong to the Crowne, or dignitie of the ſame. And all other Officers or Miniſters, of, or towards any Court whatſoeuer, and euery of them, ſhall take and pzonounce a corpozall Oath vpon the Euangeliſts, before hée or they ſhall be admitted, allowed, or ſuffered to take vpon him or them, to vſe, exerciſe, ſupply, or occupie any ſuch vocation, office, degrée, miniſtrie, rowme, or ſeruice, as is aforeſaid, and that in the open Court whereunto hée doth, or ſhall ſerue and belong. And if he or they do not or ſhall not ſerue or belong to any Ozdinarie or open Court, then he or they ſhall take and pzonounce the Oath aforeſaid, in an open place before a conuenient aſſembly to witneſſe the ſame, and before ſuch perſon or perſons, as haue, or ſhall haue authozitie by common vſe, or otherwiſe, to admit or call any ſuch perſon or perſons, as is aforeſaid, to any ſuch Vocation, Office, Miniſtrie, rowme, or ſeruice, or elſe before ſuch perſon or perſons, as by the Quéene, her heires or ſucceſſors, by Commiſſion vnder the great Seale of England, ſhall be named or aſſigned to accept and take the ſame, according to the tenor, effect, and forme

Sta. 5. Eliz. 1.

hereafter

hereafter following, viz. I A.B. doe vtterly teſtifie and declare in my conſci- The Oath.
ence, that the Quéenes highnes is the only ſupreme gouernor of this realme,
and of all other her Highneſſe dominions and countries, as well in all Spiri-
tuall or Eccleſiaſticall things, or cauſes, as temporall: And that no forreine
Prince, Perſon, Prelate, State, or Potentate, hath, or ought to haue anie
iuriſdiction, power, ſuperioritie, preheminence, or authoritie Eccleſiaſticall
or Spirituall, within this Realme: And therefore I doe vtterly renounce
and forſake all forreine iuriſdictions, powers, ſuperiorities, and authorities,
and doe promiſe, that from henceforth I ſhall beare faith and true allegeance
to the Quéenes Highneſſe, her heires and lawfull ſucceſſours, and to my po-
wer ſhall aſſiſt and defend all iuriſdictions, priuiledges, preheminences, and
authorities graunted or belonging to the Quéenes Highneſſe, her heires and
ſucceſſours, or vnited and annexed to the imperiall Crowne of this Realme:
So helpe mée God, and by the Contents of this Booke. And by the foreſaid
Statute of Anno 5. Elizab. 1. it was further enacted, That euery Archbiſhop
and Biſhop within this Realme, and the Dominions of the ſame, ſhall haue A Biſhop may
authoritie to tender or miniſter the Oath aforeſaid, to euerie or any Spiritu- tender the othe
all or Eccleſiaſticall perſon, within their proper Dioceſſe, as well in places
and iuriſdictions exempt, as not exempt. And that the Lord Chauncellour, The L. Chã-
or Keeper of the great Seale of England for the time being, ſhall and may at cellour may
all times hereafter, by vertue of this Act, without further warrant, make grant commiſ-
and direct Commiſſion and Commiſſions vnder the great Seale of England, ſions to tender
to anie perſon or perſons, giuing them thereby authoritie to tender and mini- the Othe.
ſter the othe aforeſaid, to ſuch perſon or perſons, as by the foreſaid Commiſſi-
on or Commiſſions, the ſaid Commiſſioners ſhall be authorized to tender the
ſaid Oath vnto. And moreouer it was enacted, That if anie perſon or perſons
appointed or compellable by this Act, or by the foreſaid Act made Anñ 1. Eliz. 1 The penaltie
to take the ſaid Oath: or if anie perſon or perſons, to whom the ſaid Oathe by for the firſt re-
any Commiſſion or Commiſſions ſhal be limited or appointed to be tendered, fuſall of the
refuſe to take, or pronounce the ſaid Oath, in manner and forme aforeſaid, Oath.
that then the partie ſo refuſing, and being thereof lawfully indicted, or preſen-
ted, within one yeare next after ſuch refuſall, and conuicted or attainted at any
time after, according to the lawes of this Realme, ſhall ſuffer and incurre the
daungers, penalties, paines, and forfeitures, ordained and appointed by the
Sta. 16. R. 2. 5 Statute of Prouiſion and Præmunire made Anñ 16. R. 2. And alſo if anie of
the perſons aboue named, and appointed by this Act, to take the Oathe afore-
ſaid, doe after the ſpace of iij. moneths next after the firſt tender thereof, the The ſecond
ſecond time refuſe to take, and pronounce, or doe not take and pronounce the refuſall of the
ſame in forme aforeſaid to be tendered: That then euery ſuch offendor and of- Oathe high
fendors for the ſame ſecond offence and offences ſhall forfeit, loſe, and ſuffer Treaſon.
ſuch like, and the ſame paines, forfeiture, iudgement, and execution as is vſed
in caſes of high treaſon: But no attainder by force of this Act ſhall extend No corrupti-
to make any corruption of blood, the diſheriting of anie heire, forfeiture of on of bloud or
dower, nor to the preiudice of the right or title of any perſon, other than of the of- forfeiture of
fendor during his, her, or their naturall liues onely, &c. But foraſmuch as the dower.
Quéene is otherwiſe ſufficiently aſſured of the faith & loialtie of the temporall
Lords of her high court of Parliament: Therefore this Act ſhall not extend Temporall
to to compell anie temporall Lord, of, or aboue the degrée of a Baron of this lords diſchar-
Realme, to take or pronounce the Oath aforeſaid, nor to incurre anie penal- ged of the
tie limited by this Act, for not taking, or refuſing the ſame. Prouided alwaies, Oath.
that no Perſon ſhall be compelled by vertue of this Act to take the Oathe
aboue

abone mentioned, at, or vpon the second time of offering the same, according to the forme appointed by this Statute, except the same person hath bene, is, or shall be, an ecclesiasticall person, that had, hath, or shall haue in the time of one of the raignes of the Quenes father, brother, or sister, or in the time of the Quenes maiesty, her heires, or successors charge, care, or office in the Church: Or such person or persons as had, hath, or hereafter shal haue any office or ministerie in any Ecclesiasticall court of this realme, vnder any Archbishop, or Bishop in any the times or raignes aforesaid: Or such person or persons as shall wilfully refuse to obserue the orders and rites for diuine seruice, that be authorized to be vsed and obserued in the Church of England, after that he or they shall be publikely by the Ordinary or some of his officers for Ecclesiasticall causes admonished to kep and obserue the same: Or such as shall openly and aduisedly depraue by words, writings, or any other open fact, any of the rites and ceremonies at anie time vsed, and authorized to be vsed in the church of England: Or that shall say or heare priuate Masse prohibited by the lawes of the realme: And all such persons shall be compellable to take the Oath vpon the second tender or offer of the same, and incur the penalties for not taking the said Oath, and none other.

Who only shal take the Oth vpon the second tender.

16 Because diuers seditious and euil disposed people haue lately procured and obtained to themselues from the Bishop of Rome, and his See diuerse Bulles and Writings, the effect whereof hath bene, and is, to absolue, and reconcile all those that will be contented to forsake their due obedience to the Quene, and to yeelde and submit themselues to the vnlawfull and vsurped authority of the said Bishop and his See: and by colour of the said Bulles and Writings, haue by their lewd practises, and perswasions so farre wrought, that sundry simple and ignorant persons haue bene contented to be reconciled to the said vsurped authoritie, and to take Absolution at the hands of the aforesaid subtile practisers, whereby there hath growen disobedience in many, to absent themselues from diuine seruice, and thought themselues discharged from all allegeance to her Maiestie, whereby vnnaturall Rebellion hath ensued. For redresse whereof, and to preuent great inconueniences that might ensue, by a Statute made Anno 13. Elizab. 2. it was enacted, That if any 13. El. 2.
Giuing or taking absolution by any bulls from Rome.
nie person or persons shall vse or put in vre in anie place within this Realme, or anie of the Quenes dominions, anie bull, writing, or instrument written, or printed, of absolution, or reconciliation, obtained from the Bishop of Rome, or any his successors, or from anie other person or persons authorized, or claiming authority, by, or from the said bishop his predecessors or successors, or See of Rome: Or if anie person or persons shall take vpon him or them by colour of anie such Bull, Writing, Instrument, or Authoritie, to absolue or reconcile anie person or persons, or to graunt or promise to anie person or persons within the Realme, or anie other the Quenes Dominions any such absolution or reconciliation, by anie speech, preaching, teaching, writing, or anie other open deede: Or if anie person or persons within this Realme, or anie the Quenes Dominions shall willingly receiue and take any such absolution or reconciliation: Or else, if any person or persons haue obtained or gotten since the last day of the Parliament holden Anno 1. Elizab. or shall obtaine, or get from the said Bishop of Rome, or any his successours, or See of Rome, any maner of bull, writing, or instrument written, or printed, containing any thing, matter, or cause whatsoeuer: or shall publish, or by any wates or meanes put in vre any such bull, writing, or instrument: Then all and euerie

Obtaining of bulles from Rome.

such

ſuch act and acts, offence and offences ſhall be deemed and adiudged to be high treaſon, and the offendor and offendors therein, their procurors, abettors and counſellors to the fact, and committing of the ſaid offence or offences, ſhall be deemed and adiudged high traitors to the king, and the realm, and being therof lawfully indicted and attainted according to the courſe of the Lawes of this realme, ſhall ſuffer death, and forfeit all their lands, hereditaments, &c. and cattels, as in caſes of high treaſon, by the lawes of this realme ought to be loſt and forfeited, &c. All and euery aiders, comforters, or maintainers of any of the ſaide offendor or offendors, after the committing of any of the ſaid actes or offences, to the intent to ſet forth, vpholde, or allow the doing or execution of the ſaid vſurped power, iuriſdiction, or authoritie concerning the premiſſes, or any part thereof, ſhall incurre the paines and penalties contained in the Sta-
Sta. 16. R. 2 tute of Premunire made Anno 16. R. 2.

The forfeitures of Aydors, Maintainors, &c. after the office

17 Becauſe diuers perſons euill affected had practiſed contrarie to the meaning of the foreſaid Statute of Anno 13. Elizab. 2. by other meanes than by Bulles, or Inſtruments written, or printed, to withdrawe ſeuerall of the Quænes ſubiectes from their naturall obedience to her Maieſtie to obey the vſurped authoritie of the Biſhop of Rome, and in reſpect of the ſame to perſwade great numbers to withdrawe their due obedience to her Maieſties lawes eſtabliſhed for the due ſeruice of God: For reformation whereof, and to de-
Sta. 23. Eliz. 1 clare the true meaning of the ſame Law by a Statute made Anno 23. Elizab. 1. it was declared and enacted, That all perſons whatſoeuer, which haue, or ſhall haue, or ſhall pretend to haue power, or ſhall by anie wayes or meanes put in practiſe to abſolue, perſwade, or withdrawe anie of the Quænes ſubiectes, or anie within her Realmes or Dominions from their naturall obedience to her Maieſty, or to withdraw them for that intent from their religion now by her highneſſe authoritie eſtabliſhed within her highneſſe Dominions, to the Romiſh Religion, or mone them, or any of them to promiſe any obedience to anie pretended authoritie of the Sea of Rome, or of any other Prince, State, or Potentate to be had or vſed within her Dominions, or ſhall do any ouert Act to that intent or purpoſe, and euery of them ſhall be to all intents adiudged to be Traitours: and being thereof lawfully conuicted, ſhall haue iudgement, ſuffer, and forfeit, as in caſe of high Treaſon: And if any perſon ſhall by any meanes be willingly abſolued, or withdrawne as aforeſaid, or willingly be reconciled, or ſhall promiſe any obedience to any ſuch pretended authoritie, Prince, State, or Potentate, as is aforeſayde: Then euery ſuch perſon and perſons their Procurers and Counſellours thereunto, being thereof lawfully conuicted ſhall be taken, tried and iudged, and ſhall ſuffer and forfeit as in caſes of high Treaſon. And for the further confirmation and explanation of the ſaid Statute of Anno 23. Elizab. 1. and for a more augmentation thereof in ſome ſort, there was an other Statute made
Sta. 3. Iac. 4 Anno 3. Iacob. 4. whereby it was enacted, That if any perſon or perſons ſhall either vpon the Seas, or beyond the Seas, or in any other place within the Dominions of the King, his heires, or ſucceſſours, put in practiſe to abſolue, perſwade, or withdraw any of the ſubiects of the King, his heires, or ſucceſſours of this Realme of England, from their naturall obedience to his Maieſtie, his heires or ſucceſſours: Or to reconcile them to the Pope or Sea of Rome; or to mone them or any of them to promiſe obedience to any pretended Authoritie of the Sea of Rome, or to anie other Prince, State, or Potentate: Then euery ſuch perſon and perſons their Procurors, Aidors,

Perſwading to the Romiſh religion.

Being perſwaded to the Romiſh Religion

Coun-

Councellors, and Maintainers knowing the ſame, ſhall be to all intents adiudged Traitors, and being conuicted ſhall haue iudgement, ſuffer, and forfeit as in caſe of high Treaſon. And if any ſuch perſon as is aforeſaid, either vpon the Seas or beyond the Seas, or in any other place within the Dominions of the king, his heires, or ſucceſſors ſhall be willingly abſolued, or withdrawne as aforeſaid, or willingly reconciled, or ſhall promiſe obedience to anie ſuch pretended authoritie, Prince, State, or Potentate, as is aforeſaid: Euerie ſuch perſon and perſons, their Procurers, Councellours, Aiders, and Maintainers, knowing the ſame, ſhall be to all intents adiudged Traitours, and being conuict, ſhall haue iudgement, ſuffer, and forfeit as in caſe of high Treaſon. But this clauſe touching Reconciliation ſhall not extend to any perſon which ſhall be reconciled to the Pope or Sea of Rome, that ſhall returne into this Realme, and within ſixe dayes after his returne, before the Biſhop of the Dioceſſe, or two Iuſtices of the peace of the County where he ſhall arriue, ſhall ſubmit himſelfe to the king and his lawes, and take the oath of Supremacie, ordained Anno 1. Eliz. 1. and the oath ſet downe in this Act.

Abſolued or reconciled.

A reconciled perſon ſubmitteth.

18 Whereas diuerſe perſons, called or profeſſed Ieſuites, Seminarie prieſts, and other prieſts made beyond the Sea, according to the order of the Romiſh Church, haue come, and beene ſent into this Realme, of purpoſe, not onely to withdraw the Quenes ſubiects from their due obedience to her Maieſtie, but alſo to moue ſedition, rebellion, and open hoſtilitie within her Highneſſe Dominions: For reformation whereof, by a ſtatute made An 27. El. it was enacted, That it ſhall not be lawfull, to, or for any Ieſuite, Seminary prieſt, or other ſuch prieſt, deacon, or other religious or Eccleſiaſtical perſon whatſoeuer, being borne within this realme, or anie of the dominions therof, and heretofore (ſince 24. Iun. An 1. reginæ Eli.) made, ordained, or profeſſed, or hereafter to be made, ordained, or profeſſed by any authoritie or iuriſdiction derined, challenged, or pretended from the Sea of Rome, by, or of what name, title, or degree ſoeuer the ſame ſhall be called or knowen, to come into, be, or remaine in any part of this realme, or any dominions thereof, other than in ſuch caſes, and vpon ſuch ſpeciall occaſions only, and for ſuch time only, as is expreſſed in this Act (viz. if he be ſo weake and infirme of bodie, that he can not paſſe out of this realme:) And if he doe, then euery ſuch offence ſhall be adiudged high Treaſon: And euerie perſon ſo offending ſhall for his offence be adiudged a Traitour, and ſhall ſuffer, loſe, and forfeit as in caſe of high Treaſon.

Ieſuites and Prieſts ſhall not come into this Realme.

Stat. 27. Eli. 2.

19 By a Statute made Anno 27. Elizab. it was eſtabliſhed, That if anie the Quenes ſubiects (not being a Ieſuite, Seminarie Prieſt, or other Prieſt, Deacon, or Religious or Eccleſiaſticall perſon) as is before mentioned, now being, or which hereafter ſhall be of, or brought vp in anie Colledge of Ieſuites, or Seminaries, alreadie erected or ordained, or hereafter to be erected or ordained in anie parts beyond the Seas, or out of this Realme, in anie forraine parts, ſhall not within ſixe moneths next after Proclamation in that behalfe to be made within the Citie of London, vnder the great Seale of England returne into this Realme, and thereupon within two dayes next after ſuch returne before the Biſhop of the Dioceſſe, or two Iuſtices of peace of the Countie where he ſhall arriue, ſubmit himſelfe to her Maieſtie and her Lawes, and take the Oath ſet forth Anno 1. Elizab. 1.

Seminarie perſons ſhall returne into England.

Then

Then euery ſuch perſon which ſhall otherwiſe returne, come into, or bée in this Realme, or anie other the Dominions thereof, for ſuch offence of returning, or being in this Realme, or &c. without ſubmiſſion as is aforeſaid, ſhall be adiudged a Traitor, and ſuffer, and loſe, and forfeit as in caſe of high Treaſon.

20 Hauing treated of Treaſons generally, and firſt ſhewed which be high Treaſons, and which petit Treaſons by the common lawe, and which be made treaſons by Statutes: It reſteth that I declare what is Miſpriſion of treaſon; how many ſortes thereof there be, and what is the penaltie, or puniſhment of the offendors therein. Miſpriſion of treaſon, or felonie, is moſt properly when any perſon doth vnderſtand or know that another perſon hath committed treaſon or felonie, and hée will not diſcloſe it to the King, or his Councell, or to ſome Magiſtrate, that it may be repreſſed and puniſhed, but doth conceale it. Bracton writeth, That if any man doth know another to be guilty of a treaſon, or to be vehemently ſuſpected thereof, hée ought preſently, and without any delay, come to the King if hée can, or ſend to him if he be not able to come, or to ſome other neare about the King, and to declare euery thing in order: hée ought not tarry in one place two dayes or two nights before hée doth ſée the Kings perſon, neither muſt hée attend anie other buſines, be it of neuer ſo great importance, for he is ſcarcely allowed to looke backe, becauſe if hée doe delay, and conceale the matter for a time, hée ſhall be accounted a manifeſt deceiuer of the king, and as conſenting and agréeing to the offence, whether the partie which is accuſed be his familiar friend or a ſtraunger: and if hée would after accuſe the offendor, hée ſhall not be heard, vnleſſe hée can proue, that he was hindered vpon good cauſe. And to the intent it might bée certainely knowne what Miſpriſion of Treaſon is, the Statutes of 5. & 6. Ed. 6. and 1. & 2. Ph. & M. haue defined it in this manner, viz. concealement, or kéeping ſecret of any high Treaſon ſhall be déemed and taken onelie miſpriſion of treaſon, the offendors therein to forfeit, and ſuffer as in caſes of miſpriſion of treaſon, as héretofore hath béene vſed: And in all caſes of Miſpriſion of treaſon, the offendor ſhall forfeit to the King his goodes, and his lands during this life, and hée ſhall be impriſoned during his life. And euerie treaſon or felonie doth include Miſpriſion, ſo that where anie perſon hath committed treaſon or felony, the king, if hée will, may cauſe the offendor to be indicted, and arraigned, but of Miſpriſion. But ſome other offences, partly by the common Lawe, and partly by Statute be Miſpriſion of Treaſon, beſides concealement or kéeping ſecret of Treaſon, which bée héereafter expreſſed.

What miſpriſion of treaſon is.

Bract. de Cor. cap. 3.

Stat. 5 E. 6. 11. 1. & 2. P. & M. 10

The forfeture in miſpriſion.

1. El. 3 10.

21 By reaſon that diuers euill diſpoſed perſons, aſwel without this realm, as within were boldened to counterfeit and forge ſuch kinde of golde and ſiluer, and vtter the ſame in the Realme, as is not the proper coine of this Realme, nor currant in payment in this Realme, becauſe before there was no condigne puniſhment prouided for ſuch offences: For the redreſſe whereof, by a Statute made Anno 14. Elizab. 3. it was enacted, That if anie perſon or perſons ſhall héereafter falſely forge, or counterfait anie ſuch coine of golde or ſiluer, as is not the proper coine of this Realme, nor permitted to be currant within this Realme: Then euery ſuch offence ſhalbe déemed and adiudged Miſpriſion of high Treaſon: And the offendors therein, their procurors, aydors, and abettors, being conuicted according to the Lawes

Stat. 14. Eli. 3

Counterfaiting of money not currant.

of

of this Realme of ſuch offences, ſhall be impriſoned, and forfeit ſuch lands, goods, and Chattels, as in caſes of Miſpriſion of treaſon, for concealement of treaſon. S. Br. 6.

Aiding of perſwaders to the Romiſh religion.

22 By the Statute made Anno 23. Elizab. 1. it is enacted and declared, That all and euerie perſon and perſons that ſhall wittingly be Aiders or Maintainers of ſuch perſons as ſhall offend in perſwading or reconciling to the Romiſh Religion, or in being reconciled thereunto, or in any of the ſame offences, knowing the ſame, or which ſhall conceale anie of the ſaid offences, and ſhall not within twentie dayes at the furtheſt after ſuch perſons knowledge of ſuch offence diſcloſe the ſame to ſome Juſtice of peace, or other higher officer, ſhall be taken, tried, and iudged, and ſhall ſuffer, and forfeit as offenders in Miſpriſion of treaſon. S. Br. 17. Sta. 23 Eliz. 1

Concealing of reconciliation offered.

23 By the Statute made Anno 13. Elizab. 1. it was ordained, That if anie perſon or perſons to whom anie abſolution, reconciliation, bull, writing, or inſtrument obtained from the Biſhop of Rome, or anie of his ſucceſſors, or from anie other claiming authoritie, from, or by them, ſhall be offered, moued, or perſwaded to be vſed, put in vre, or executed, ſhall conceale the ſame offer, motion, or perſwaſion, and not diſcloſe and ſignifie the ſame by writing, or otherwiſe, within fiue weekes then next following, to ſome of the Queenes priuy Councell, or to the preſident or vicepreſident eſtabliſhed in the North, or the Marches of Wales for the time being: Then the ſame perſon or perſons ſo concealing, ſhall incurre the penaltie and forfeit of Miſpriſion of high Treaſon. But no perſon or perſons ſhall be troubled, in, or for miſpriſion of high Treaſon, for any offence made Treaſon by this Act, other than ſuch as by this Act before are declared to be in caſe of miſpriſion of high Treaſon. S. Br. 16. Sta. 13, Eliz. 2

Recording an indictment not found.

24 If a Juſtice of peace do inroll a bil of indictment not found by the countrey, amongſt other indictments which be found; This is a great Miſpriſion, and fineable, and he ſhall loſe his office. 2. Ric. 3. 10.

Drawing a ſword to ſtrike a Juſtice.

25 If one draw his ſword to ſtrike a Juſtice aſſigned, ſitting in place of Iudgement, this is Miſpriſion of Treaſon, and the offender being indicted, and found guiltie thereof, ſhall haue iudgement to forfeit his lands and chatels, and to haue his right hand cut off, and to be perpetually impriſoned: for that the Juſtice aſſigned by the kings Commiſſion to execute iuſtice, ſitteth in the place and ſtead of the king, and ſo the offender oppoſeth himſelfe againſt the king, and the office of iuſtice. M. 22. E. 3, 13

Striking a Iuror in a Juſtices preſence.

26 If in the preſence of a Juſtice aſſigned, one doe ſtrike a Iuror: that is returned vpon an Enqueſt: this is Miſpriſion of Treaſon, and the offender being indicted thereof, ſhall haue iudgement to loſe his lands and goods to the king, to haue his right hand ſtricken off, and to be committed to perpetuall priſon. M. 19. Ed. 3 Fitz. Iudgement, 174.

Striking in Weſtminſter Hall.

27 And the ſame Law is, if one ſtrike an other in Weſtminſter Hall during the time that the Kings Courts be ſitting there, and be indicted thereof: this is Miſpriſion of Treaſon, and an indignitie offered to the Magiſtrates, and place of iuſtice: Therefore in this caſe the offender ſhall haue iudgement Fitz. Cor. 280 M. 2. & 3. Ph. & Mar. Dyer, 188.

to haue his right hand cut off, to loſe his lands, and goods, and to be perpetually impriſoned.

M.22.E.3.13 28 If one of the Kings Juſtices aſſigned, do arreſt any perſon which hath made a fray before him, & a ſtranger will reſcue the priſoner, whereby he doth eſcape, this is miſpriſion of Treaſon, and in this caſe, as well the priſoner, as he that made the reſcous, ſhall forfeit to the King his landes and goods, and be impriſoned during their liues: Becauſe the attachment of ſuch a Juſtice, is the Kings owne attachment in the conſtruction of Lawe. Reſcuing a priſoner arreſted by a Iudge.

29 Becauſe ſtriking in the Kings palace, or where he ſhall remaine in perſon, is a kinde of diſgrace offered vnto, or contempt had of the Maieſtie of the King, who is the head of the Common-wealth, and the chiefe preſeruer of peace therein; and therefore it is to bee accounted a great Miſpriſion, and worthy of ſeuere punishment: wherefore, for the preuention thereof, by a 33.H.8.12 Statute made Anno 33. H. 8. 12. it was eſtabliſhed, That if any perſon or perſons ſhall maliciouſly ſtrike any other perſon, whereby blood ſhall be ſhedde in any of the Kings houſes, or Palaces, or any other houſe wherein the King, his heires, or ſucceſſors, ſhall bee at that time abiding in his royall perſon, viz. within any edifices, courts, places, gardens, orchards, or houſes within the Porters ward of any of the houſes aboue rehearſed, or within any Gardens, priuie walkes, orchards, tilt-yards, wood-yards, tennice-plaies, cockefights, bowling alleyes, neere adioyning to the ſayd houſes, and being part of the ſame, or within two hundred foot of the Standard of any outward gate or gates of any of the ſaid houſes, commonly vſed for paſſage from any of the houſes &c. and ſhalbe thereof indicted, arraigned, and attainted, according to the forme of the ſaid Statute, he ſo offending, ſhall haue his right hand cut off, bee impriſoned during his life, and make fine to the King at his pleaſure. But this Act and the paines and forfeitures before rehearſed ſhall not extend to any Noble man, nor other perſon, that ſhall ſtrike his ſeruant within the ſayd Palaces, or Houſes, or the limits of the ſame, with his hand or fiſt, or any ſmall ſtaffe or ſticke, for correction for any offence committed: Nor to any of the Kings officers, that in execution of his office, ſhall ſtrike any perſon with his hand, fiſt, or ſmall ſtaffe, ſticke, or tipſtaffe: Nor to any other perſon that in doing ſeruice at any triumph, or any other time of ſeruice, by the Kings, or any of his Councel, or other his head officers commandement, ſhal for the execution of his ſaid ſeruice ſtrike any perſon with his hand, fiſt, ſmall ſtaffe, or ſtick, or any tipſtaffe within the ſame palace, houſe, &c. although by reaſon of the ſame ſtroke or ſtrokes, there happen to bee any blood-ſhed of ſuch perſon as ſhalbe ſo ſtricken, except the perſon ſo ſtricken die of the ſame ſtroke within one yeare next after. Shedding of blood within the Kings palace.

And ſo it is to be noted by the foreſaid Statute of 33. H. 8. and the foure caſes next precedent, that ſtriking in the Kings Palace, or Houſe where himſelfe doth make his abode is not ſo penall, as ſtriking, or drawing a weapon to ſtrike, is where he is but repreſented by others in time and place of Juſtice; for the Law doth inflict a more ſeuere puniſhment vpon him who ſtriketh, or draweth his weapon to ſtrike, in place & time of execution of Juſtice, than it doth to him who offereth the like violence in the houſe, and at the time where the Kings own perſon is remaining: In which caſe the offendor receiueth no puniſhment at all for ſtriking, or drawing of his weapons to ſtrike, vnleſſe

bloud be ſhed thereby. Which lawes doe proceed of the great care and reuerend reſpect that is had of iuſtice, and of peace enſuing thereof.

30 For as much as ſome doubts and queſtions were moued, that certaine kinds of Treaſons, Miſpriſions, and concealments of Treaſons, committed out of this Realme, could not by the common Lawes of this Realme be enquired of, heard, and determined within this Realme of England: for a plaine declaration whereof, by a Statute made Anno 35. H. 8. it was enacted, That all manner of offences being alreadie made or declared, or hereafter to bee made or declared to be Treaſons, Miſpriſions of Treaſons, or concealements of Treaſons, and done, perpetrated, or committed by any perſon or perſons out of this Realme of England, ſhalbe enquired of, heard, and determined before the Kings Iuſtices of his Bench for pleas to be holden before himſelfe, by good and lawfull men of the ſame ſhire, where the ſaid Bench ſhall ſit, and bee kept: or elſe before ſuch Commiſſioners, and in ſuch ſhire of the Realme, as ſhall bee aſſigned by the Kings Commiſſion, and by good and lawfull men of the ſame ſhire, in like manner and forme to all intents, as if ſuch treaſons &c. had beene committed in the ſame ſhire, where they ſhall be ſo inquired of, heard, and determined as is aforeſaid. And if any Peere of this Realme ſhall be indicted of any ſuch Treaſons &c. then he ſhall haue his triall by his Peeres, &c. Which foreſaid Statute of Anno 35. H. 8. remaineth in force notwithſtanding the Statute of Anno 1. & 2. P. & M. 10. By which it is ordered, That all Trialls had, awarded, or made for any Treaſon, ſhalbe had & vſed only according to the courſe of the common laws of this realme, & not otherwiſe.

St. 35. H. 8. 2. 26. H. 8. 13. 5. Ed. 6. 11.

Trial of treaſons committed out of the Realme.

H. 13. M. Dyer. 298.

31 By a branch of a Statute made Anno 26. H. 8. it was ordained, That all Proces of Outlawrie to be made within this Realme, againſt any offendors in Treaſon, being reſiant or inhabiting out of this Realme, or beyond the Sea, at the time of the Outlawrie pronounced, ſhalbe as good and effectuall in the Law to all intents, as if any ſuch offendors had beene reſiant within this Realme, at the time of ſuch Proceſſe awarded, & Outlawrie pronounced. And after by a Statute made Anno 5. E. 6. it was conditioned and prouided, That if the partie ſo outlawed ſhall within one yeare after the ſaid Outlawrie pronounced, or iudgement giuen thereupon, yeeld himſelfe to the cheife Iuſtice of England for the time being, and offer to trauerſe the ſayd indictment, or Appel, whereupon the ſaid Outlawrie ſhalbe pronounced: then he ſhalbe receiued to the ſayd trauerſe, & being thereupon found not guiltie by verdict of xij. men, he ſhall bee clearely diſcharged of the ſaid Outlawrie, and of all penalties and forfeitures by reaſon of the ſame; as though no ſuch Outlawrie had bin made. And it is to be noted, that the foreſayd two Statutes doe extend to offendors in any manner of Treaſons by the Common-law, or Statute, & not to thoſe onely which were declared to be Treaſons by the Statute of 25. Edw. 3.

Outlawrie of offendors in Treaſon being beyond Sea.

St. 5. & 6. 11.

H. 12. M. Dyer 287.

32 For the ſpeedy triall and puniſhment of ſuch perſons, as ſhall commit any manner of Treaſons within the Principality of Wales, and the Marches of the ſame, or elſewhere within the Kings dominions, where his Originall Writs in the Chauncerie of England commonly runne not, by a Statute made Anno 32. H. 8. it was enacted, That all ſuch Treaſons and Miſpriſions of Treaſons as is aforeſayd, ſhall bee preſented, and tried by the oathes of twelue men, inhabiting within any ſuch Shires, and before ſuch commiſſioners, as the king from time to time in ſuch caſes ſhal aſſigne and appoint by

St. 32. H. 8. 4.

Trial of treaſons committed in Wales.

by his Commiſſion, or Commiſſions of Oyer & Determiner, in like manner & forme, as if ſuch treaſons, or miſpriſions of treaſons had beene done and committed within ſuch of the ſaid Shires, into the which the ſaid Commiſſions of Oyer & Determiner ſhalbe directed, as is aforeſaid: And all Preſentments, Trials, Proceſſes, Judgements, Executions, and forfeitures hereafter to be had, made, or done by vertue of ſuch Commiſſions, ſhall be good and effectuall in the lawe, to all purpoſes. Any grant, cuſtome, or vſage, to the contrarie notwithſtanding &c. After that, by the Stat. made Añ. 1. & 2. P. & M. it was enacted, That all trials hereafter to be had, awarded, or made for any Treaſon, ſhall bee had and vſed only according to the due Order and Courſe of the common law of this Realme, and not otherwiſe. Quære whether this Statute of 1. & 2. P. & M. doth repell or take away the force of the before rehearſed Statute of 32. H. 8.

St. 1. & 2. P. & M. 10.

St. 33. H. 8. 20

33 By a ſtatute made Añ 33. H. 8. it was eſtabliſhed, That if any perſon or perſons ſhalbe attainted of high Treaſon by the courſe of the common lawe or ſtat. of this Realme, in euery ſuch caſe, euery ſuch attainder by the common law ſhalbe of as good ſtrength, valne, force, and effect, as if it had beene done by authoritie of Parliament. And the King, his heires, and ſucceſſors ſhall haue as much aduantage by ſuch attainder, as well of vſes, rights, entries, conditions, and poſſeſſions, reuerſions, remainders, and all other things, as if it had beene done and declared by authoritie of Parliament, and ſhall be deemed and adiudged in actuall and reall poſſeſſion of the lands, tenements, hereditaments, vſes, goods, chattels, and all other things of the offendors ſo attainted, which his Highneſſe ought lawfully to haue, and which they ſo being attainted, ought or might lawfully loſe and forfeit, if the attainder had beene done by the authoritie of Parliament, without any office or inquiſition to be found of the ſame: Any Law, Statute, &c. notwithſtanding. Sauing to all and euery perſon and perſons, and bodies politique, and their heires, aſſignes, and ſucceſſors, and euery of them, (other than ſuch perſon and perſons which ſhall be attainted of high Treaſon, and their heires and aſſignes, and euery of them, and all and euery other perſon and perſons claiming by them, or any of them, or to the vſes of any of them, after the ſaid Treaſons committed) all ſuch right, title, vſe, poſſeſſion, entrie, reuerſions, remainders, intereſts, conditions, fées, offices, rents, annuities, commons, leaſes, and all other commodities, profits, and hereditaments whatſoeuer, they or any of them, ſhould, might, or ought to haue had, if this Act had neuer bin made.

The force of attainder of treaſon by the common lawe.

St. 29. El. 2.

34 Becauſe through corruption, or negligent kéeping, the Records of attainders of Treaſons happen to be many times impaired, blemiſhed, or otherwiſe to be defectiue; therefore by a Statute made An. 29. El. it was ordained, That no Record of attainder that now is, of any perſon or perſons, of or for any high Treaſon, where the party ſo attainted, is, or hath bin executed for the ſame Treaſon, ſhall by the heire or heires, of any ſuch perſon, or by any other whatſoeuer, clayming in, by, from, or vnder any ſuch heire, or heirs, be in any wiſe hereafter reuerſed, vndoine, anoded, or impeached by any plea, or for any error whatſoeuer. But this Act ſhall not extend to any Record of attainder of or for any treaſon vpon which any writ of Error is now depending, or which Record is already reuerſed, repealed, or vndone, by or for any error, matter, plea, or cauſe whatſoeuer, but the ſame ſhall bée and remaine as vnto and againſt that party at whoſe ſuite the ſame writ of Error is depending, or at

No Record of attainder ſhall be reuerſed when the offendor is executed.

whoſe purſuit the ſame Record hath bin reuerſed, repealed, or vndone, and his, and their heires and aſſignes only, as if this Act had neuer bin, had, or made: Any thing in this Act &c.

Felony made treaſon by Statute.

35 If an offence be murder, or other felonie by the common lawe, and after the ſame offence ſhalbe made treaſon by a Statute, Then it is not puniſhable as murder and felonie, but as Treaſon: And no appeale will lie thereof, and the Kings pardon of all Treaſons will diſcharge the offendor therein. M. 33. H. 8. Dyer 50.

An Engliſh traitor ſubiect to another prince.

36 If an Engliſh man borne being indicted of high Treaſon, will vpon his arraignment plead, that he will not anſwer to the ſaid indictment, for that he is a ſubiect and ſeruant to a forraine Prince, and not ſubiect to the King of England: in this caſe the Court will record a Nihil dicit, and he ſhall haue ſuch iudgement as is vſed in caſes of Attainder of Treaſon. P. 13. El. Dyer 300.

An alien borne committeth treaſon.

37 If an alien borne doe commit high Treaſon in England in the time of peace, betweene England and that Nation where the ſame alien was borne, he ſhalbe indicted and arraigned of high treaſon, and ſhall haue iudgement according to his deſert. But if it were in the time of warre betweene England and that Nation where the ſaid alien was borne, then the alien ſhall be ranſomed, and not arraigned. P. 3. & 4. P. & M. Dyer 140. H. 33. H. 6. 1.

Ioyning the K. armes with his owne.

38 An Earle of this Realme was attainted of high treaſon, for ioyning the Armes of England before the Conqueſt, and the Armes ſince, to his owne Armes, and for ſome other offences: Quære within which words of the firſt rehearſed Stat. of 25. E. 3. or of any other Stat. at the time of his arraignment in force, that offence was compriſed and made Treaſon. S. Triall by Peeres 2. An. 38. H. 8. Br. Treaſon 2.

Homicide.

Homicide.

Bracton de corona.

HOmicide is a word compound, and is derived of these two words, viz. hominis & cedium, and the most apt and proper definition thereof is, when one man or moe men doe kill another man: for if a man be killed by a dogge, a beast, or other thing, it is not properly termed homicide. The said homicide may be committed by seuerall meanes, viz. by iustice, as when a Iudge doth command or pronounce his sentence, that a man attainted by course of law shall be put to death: Homicide by iustice.

By necessitie, as when one man killeth another with griefe and sorrowe of minde, thereby to deliuer himselfe, or that which is his, or some other persons, or things which he is bound to defend from further perill, which he or they cannot otherwise escape: Homicide by necessity.

By mischance, as when a man casteth a stone at a bird, or a beast, or is in lopping or felling of a tree, and another man passing by is slaine therewith, without the foreknowledge and against the will of him who did the deede: By mischance.

By will, as when one man hath a will to fight with another, and then doth kill him, or some other that is in his company, and doth take his part in that combate: By will.

But of this Homicide by will there be two sorts, whereof the one is called Murder, and that is, when one man vpon malice prepenced, and forethought, doth feloniously kill an another. And the other is called Manslaughter, or Chance-medley, and that is, when two men fight together vpon a suddaine heat of blood, without any malice precedent, and one of them doth kill the other. By murder. By manslaughter.

2 If a man be adiudged by the court to be hanged, and the Sheriffe is commanded by the Iudge to doe execution in that manner, and he doth it accordingly; this is Homicide by iustice. But if the Sheriffe do behead him, or cause him to be beheaded, or by any other meanes to be put to death, than according to the Iudgement, this is no Homicide by iustice, but felonie in the Sheriffe, for that he hath not obserued the order of the Law, viz. the iudgement in putting the offendor to death. And the same law is, if one which is not Sheriffe, or other officer thereunto lawfully deputed, will put to death an offendor that is condemned to die vpon his owne authorities: for that is no Homicide by iustice, but felonie in him who being not the Kings officer thereunto alligned, hath killed one of the Kings Subiects, without warrant of his law. And therefore if the Iudge himselfe who gaue iudgement of death against an offendor, shall after put the same offendor to death, it is not iustifiable, but being indi- Homicide by iustice. M. 33. H. 6. 58 The Order of Law, not obserued in execution of Iustice.

ted and arraigned thereof, he muſt plead not guiltie. And in this caſe the wife may haue an Appell of the death of her husband ſo put to death, againſt the ſaid ſhirife or other perſon, though the heire cannot haue an Appell of the death of his father ſo executed, becauſe his blood is corrupted by the Attainder. 35.H.6 57.

No man may kill him that is outlawed of felony, or attainted in a Præmunire.

3 If a man be attainted of felonie by outlawrie, it is Homicide by iuſtice for the Iudge before whom he is brought, to command him to be put to death, and for the ſhirife to ſee execution done of him, according to the iudgement, viz. to hang him: But it is felonie and not Homicide by iuſtice, for any other man of his owne authoritie to kill him. And for as much as it was doubtfull whether by the laws of this Realme there was any puniſhment for ſuch as kill, or ſlea any perſon or perſons attainted in, or vpon any Præmunire. Therefore by a Statute made Anno 5. El. 1. it was enacted, That it ſhall not be lawfull to any perſon or perſons to ſlea or kil any perſon or perſons in any manner attainted, or hereafter to be attainted of, in, or vpon any Præmunire by pretence, reaſon, or authoritie or force of any word, or words, thing or things contained or ſpecified in any Statute or Law of Prouiſion and Præmunire, or in any of them: Any Law, Statute, Opinion, or Expoſition to the contrarie notwithſtanding: So that to kill any perſon attainted vpon a Præmunire is felonie, and not Homicide by iuſtice. 2.Aſſ.p.3. 27.Aſſ.p.4. 35.H.6.58. 5.El.1.

Killing a felon that will not be arreſted.

4 A ſhirife, a bayly, or any other which hath warrant to arreſt a man indicted of Felony, may well iuſtifie the killing of him, if he wil not ſuffer himſelfe to bee arreſted, but that he doth ſtand at his defence, in ſuch manner, that the officer and his aſſiſtants cannot arreſt him without killing of him. And in this caſe the officer ſhalbe diſcharged without the Kings pardon: for this is Homicide by iuſtice done vpon him, who refuſeth to yeeld vnto, and ſubmit himſelfe to the iuſtice of the Law. And euery perſon, as well he that hath no warrant, as he that hath, may apprehend a Felon: and if he wil not yeeld to be arreſted, but ſtand to his defence, or flie, the purſuer may kill him without blame, the arreſt being for Felony, and therein he ſhal commit Homicide by iuſtice. And 22.Aſſ.p.48. Fi.Cor.261.

Killing of ſuch as be vnlawfully aſſembled.

by the Statute of Anno 1. M. it is eſtabliſhed, That if any perſons, aboue the number of two, ſhal vnlawfully aſſemble together to the intent with force and armes to doe, practiſe, or put in vre any of the things in the ſaid ſtatute mentioned, then it ſhall be lawfull to euery Iuſtice of peace, and to euery Shirife, Mayor, Bailife, and other head officer of any Citie, or Town corporat, or to any other hauing the K. Commiſſion, or letters, to raiſe and aſſemble the Kings ſubiects in manner of warre to bee arraied in ſuch great number as he or they ſhall thinke meet or able, to the intent by violence of ſtrength to ſuppreſſe and take the ſaid perſons ſo vnlawfully aſſembled. And if the ſaid perſons ſo vnlawfully aſſembled, or any of them ſhal fortune to be ſlain, maihemed, or hurt, in, or about the repelling or taking of them, then euery ſuch Iuſtice, Mayor, Shirife, &c. and euery other perſon hauing authority as is aforeſaid, and euery perſon and perſons by him or them aſſembled, ſhall be free, diſcharged, and vnpuniſhed, as well againſt the King, as againſt all and euery other perſon and perſons, of, for or concerning ſuch killing, maiheming, hurting, &c. for it is Homicide by Iuſtice done and committed by perſons lawfully authoriſed, vpon ſuch riotous and rebellious perſons which after Proclamation made will not depart and ſeuer themſelues aſunder, and ſubmit and yeild themſelues obedient to the law of the Realme. S. Riots. 37. 1.M.12.

5 As any man may iuſtifie the killing of another before arreſt, if he will not yeild, ſo may he doe after arreſt, if there be any inevitable neceſſitie therein: as if an offendor bee arreſted for felony, and when hee is in leading towards the Gaole he breaketh from thoſe that doe conduct him, and flieth away, and his conductors do purſue him ſo, that they cannot apprehend and take him againe without killing of him: In this caſe, if they do kill him, this is homicide by iuſtice, and iuſtifiable, for that the offendors would not yeild to the triall & iuſtice of the law. But if he which killed the offendor, procured the matter, which is iuſtifiable for the cauſe aforeſaid, to be found before himſelfe, in reſpect of ſome iuriſdiction which he hath to enquire of felonies, he ſhall not bee diſcharged vpon ſuch an indictment found, vntill he be arraigned thereof, and the matter alſo found by verdict, becauſe he himſelfe was Iudge. But the law is otherwiſe if it were found before other Commiſſioners.

Killing him that is carrying to the Gaole.

22.Aſſ.p.55. Fi.Cor.288. Fi.Cor.328.

6 As a man may kill an offendor before arreſt, or after arreſt if he will not yeild, ſo in ſome caſe a man may kill him that is vnder arreſt, & in priſon: As a Gaoler came in the night with a Lanthorne in his hand to ſee his priſoners, who before his comming had broken their yrons, and ſtood all ready to kil him, and did beat and euill intreat him, and he paning a hatchet in his hand, therewith ſlew two of them, and eſcaped from the reſidue: This was adiudged to be well done, and to deſerue no puniſhment, for this was by the Gaoler homicide done by iuſtice, to kill them who attempted to kill him, and who indeauoured to eſcape the triall and iuſtice of the Law.

Killing a priſoner attempting to eſcape.

22.Aſſ.p.55.

7 It appeareth by the Statute of an 24.H.8.5. That it is homicide iuſtifiable, if a man doe kill an offendor which attempteth felonioufly to robbe, or murder him, in, or neere any high way, cart way, horſe way, or foot way, or in his manſion houſe, or to kill him which attempteth burglarie to breake his dwelling houſe in the night, and that the ſame ſhalbe by verdict ſo found and tried, for he ſhall neither loſe lands, goods, or cattels for the death of any ſuch euill diſpoſed perſon, but ſhalbe fully diſcharged as if he were acquit thereof.

24.H.8.5. 22.Aſſ.p.55. 26.Aſſ.p.23. & 32. Co.li.5.f.91. Fi.Cor.303.et 305.

Killing him that attempteth robbery, or burglary.

8 To the intent that Treſpaſſors in forreſts, chaſes, parkes, and warrens, may more charily eſchew, and feare to enter and treſpaſſe in the ſame, by a Statute made an 21.E.1. it was ordained, That if any forreſter, parke-keeper, or warreiner ſhall find any offendors within his Bailiwicke there wandring and doing hurt, which after Huy & Crie leuied to keepe the peace, and obey the Law, will not yeild themſelues to the Forreſter &c. but will flie & defend themſelues by violence, Then though the Forreſters, Park-keepers, and Warreiners, & any other comming in their companie to keepe the Kings peace, endeauouring to arreſt ſuch offendors, doe kil any of the ſame offendors, he ſhal neither ſuffer death, nor ſuſtaine any other trouble or puniſhment therefore: But if any of the ſayd Forreſters, Parke-keepers, or Warreiners, or any other by reaſon of contention, deſpite, or hatred, will lay to any mans charge paſſing through his Bailiwicke, that hee came thither to doe hurt, whereas hee did not, neither was found wandring or offending, and ſo kill him, and thereof be conuicted, he ſhal be puniſhed for his death, as he ought to be for the death of an other being in the Kings peace. And by this meanes the Forreſter doth commit homicide by iuſtice vpon the offendor, becauſe he will not ſubmit himſelfe, and yeild to be iuſtified by the law.

Killing of an offendor in a Parke, warren, or forreſt.

33.21.E.1.

9 If the King haue an auncient Chace, whereof the Lieutenants, or Keepers haue vsed time out of the remembrance of man, as well by night as by day to hunt in the Mannor of Dale adioyning to the said Chace such deare as do straie out of the same Chace into the said Mannor, as in the purlewe of the said Chace, but yet diuided from the same with Hedge and Ditch. And after the same Mano^r of Dale doth come into the K. hands, and the K. doth graunt the same Mano^r to another and his heires, & further doth grant vnto the same person free Warreine in all his demesne lands of the sayd Mano^r, which free Warreine hath bin before confirmed by diuers auncient Charters with these words, viz. Ita quod nullus intret in Warrennam illam ad fugandum sine licentia & voluntate of the graunter of the said Mano^r. In this case, notwithstanding the vnitie of the possession of the Chace, and the Mano^r of D. in the King, and notwithstanding the Kings grant of the mano^r, and the confirmation of the Warreine with the generall words of the Prohibition afore said (which do onely extend to the Subiect) the Kings liberty of the purlewe doth remain vnextinguished. And therefore if one of the Kings Keepers of the said Chace shall come into the said Mano^r of D. being purlew to fetch in his straied deere, it is not lawfull for the Lord of the said Mano^r of D. or for any of his seruants to kill him after hue and cry made to keepe the peace, and obey the law, and if he doe it is not iustifiable by the foresaid Statute of 28. Ed. 1. for he cannot commit homicide by Iustice, nor iustifie the killing of him in his Warreine, who hath in a sort, & to some purpose, interest, to come into the said ground to fetch forth his straied deere.

M. 15 & 16. El. Dyer 327.

Vnity of possession in a Chace, and a Mano^r adioyning, hauing free Warren.

10 If in Appell of murder, burglarie, or other felonie, the defendant doe plead not guilty, ready to defend it by his body, and the Appellant and Appellee doe ioyne in the combat, and one of them doe kill another in battell: This is Homicide by iustice, and not punishable: for as the law of the Realme doth allow triall by battell in that case, so doth it ratifie and confirme the euent and successe thereof to be iustifiable. And the law (depending vpon the iudgement of God, who giueth victory according to the truth) hath assigned either of them to do execution of iustice vpon the other, as it hath assigned the Shirife to doe execution of iustice vpon him that after verdict, confession, or outlawrie is condemned to die.

One killing another in combat.

37. H. 6. 22.

11 Homicide vpon necessitie, as before is said, is when one man killeth another with griefe of mind, and sorrowe of heart, and being enforced vnto it, thereby to deliuer himselfe, or that which is his, or some other persons that he is bound to defend from further perill, which otherwise cannot be auoyded, and this homicide is by law iustifiable. As if one or diuers persons come to a mans house to burne his house, but he or they doe not burne it, if the owner of the house or any of his seruants doe shoote forth of the house, and kill the offendors or any of them, this is Homicide by necessitie in defence of his house, and not felony. And in like sort if one or more come to a mans house to robbe him, and the owner or any of his seruants, or company being with him in the house doe kill the offendors, or any of them, this is homicide by necessity in defence of his goods, and thereby iustifiable: for a seruant may iustifie the killing of an other in defence of his masters person, or house, if the offence can not be otherwise auoided. And he may iustifie the killing of him who robbed and killed his Master, so that he doe it presently. And if one doe attempt to robbe an other being out of his house, and pursueth

Homicide vpon necessitie.

Homicide in defence of his house from burning.

Homicide in defence of a man from robbery.

26. Ass. p. 23. Co. li. 5. 91.

Lex Almedi.

21. H. 7. 39.

26. Ass. p. 23.

him

him to that end, the true man may kill the offendor, and shalbe discharged
26.Ass.p.32. thereof, without any forfeiture or suing of the Kings pardon. And so shall
he in the other former cases, where any doe attempt to burne, or robbe a
mans house: for a mans house is his Castle, out of which the Lawe will not
21.H.7.39. compell him to flie.

12 Forasmuch as it was in question, and doubt, if any euill disposed person
or persons, doe attempt feloniously to robbe or murder any person or persons,
in, or nigh any common high way, cart way, horse way, or sote way, or in
their mansion, mesuages, or dwelling places, Or that feloniously do attempt
to breake any dwelling house in the night time, should happen being in their
such felonious intent, to be slaine by him, or them whom the sayd euill doers
should so attempt to robbe or murder, or by any person or persons being in the
dwelling house which the same euill doers shall attempt burglarily to breake
by night, if the saide person so happening in such cases to slay any person so at-
tempting to commit such murder, or burglarie, should for the death of such euil
disposed person forfeit and lose his goods and cattells for the same, as any other
person should doe, that by chaunce medley should happen to kill any other per-
son in his or their defence: for the declaration of which ambiguitie and doubt
8.H.8.5. by a Statute made Anno 24. H. 8. it was enacted, That if any person or
persons shalbe indicted or appealed for the death of any such euill disposed per-
son or persons, attempting to murder, robbe, or burglarily to breake mans-
on houses as is aforesayde, that the person or persons so indicted, or appealed
thereof, and of the same by verdict so found and tried, shall not forfeit or lose
any lands, tenements, goods, or cattells, for the death of any such euill dispo-
sed person in such manner slaine, but shall be thereof and for the same fully ac-
quitted and discharged, in like manner as the same person or persons should be
if he or they were lawfully acquited of the death of the saide euill disposed per-
son or persons.

No forfeiture for Homicide upon necessity.

Pl.Cor.305. 13 But if one man doe come in the day time to an other mans house, and
doth make an assault upon him in his owne house, and doth fight with him,
if the owner of the house dos slay the assailant in his owne defence, the owner
of the house shall forfeit his goods, and be driuen to sue for the Kings pardon,
except that it be proued and found, that the assailant came also to robbe the o-
ther in his house.

Killing another in his owne defence in his owne house.

14 Homicide in a mans owne defence, ought to be so great, and upon such
necessitie, that it must be esteemed to be inevitable, or otherwise it will not ex-
cuse: for here the killer of the man hath not to doe with a felon, as in some of
the former cases, but with a lawfull and true man. And it is not materiall
whether the person that did kill, or the person which was slaine did beginne
the fray, but the whole matter will consist upon the inevitable necessity, with-
out the which the killing is by no meanes excusable. And therefore the true
definition of Homicide in his owne defence is, when the assailant doth make a
Fitz.Cor.284. fray, or offer force to the defendant, and doth strike him, e the defendant doth
286,287.297. flie so far as he can for saving of his life, so that he is come to a straite, beyond
the which he cannot flie, and the Assailant doth continue his assault; whereup-
on the defendant doth strike the assailant, and doth kill him, this is homicide in
his owne defence. For if the defendant could haue auoyded the assailant, and
43.Ass.p.31. did not, but when the assailant did strike him, he did strike him againe and kil-
led

Necessitie inevitable is requisite in homicide in his owne defence.

The definition of homicide in his owne defence.

led him, this is felonie in the defendant. And though the defendant doth giue to the aſſailant diuers wounds, yet that is not materiall, if he flie to a ſtraite before he doth giue him the mortall wound: for the Law doth allowe that iuſtifiable, which a man doth in defence of his owne perſon. And yet in the caſe aforeſaid, if the defendant vpon malice prepenced, doth ſtrike another and then flie to a wall or ſtraite, and the other doth purſue and ſtrike him, and the defendant who fled doth kill the purſuer, this is murder and not homicide in his owne defence: for the malice prepenced was the ground and beginner of this homicide, and not neceſſitie inevitable. Fl.Cor.387.

Where in homicide in his owne defence goods ſhall be forfeit, and where not.

15 One man did ſtrike another to the ground, and then drewe his knife to kill him, and the defendant lying vpon the ground drew his knife, and the aſſailant was ſo haſtie to kill the defendant, that he did fall vpon the defendants knife, and ſo was ſlaine: In this caſe the defendant was not adiudged guiltie of the aſſailants death, neither did he forfeit his goods, for the aſſailant in a maner killed himſelfe. But if one man doe ſtrike another, and the defendant doth flie to a ſtraite, and there beeing and perceiuing that the aſſailant would kill him, holdeth a pitchforke betweene the aſſailant and him, and the aſſailant is ſo fierce that he runneth vpon the pitchforke, and is ſlaine: In this caſe the defendant ſhal be forced to purchaſe his pardon, and ſhal forfeit his goods, for here he did not lie vpon the ground, but ſtod vpon his feet, and ſo might haue made ſome other defence for his ſafety, that the other in the caſe aforeſaid lying vpon the ground could not doe. 44.Aſſ.p.17. Fl.Cor.286. 287.

Killing of a man in his owne defence found by verdict.

16 When a man is indicted and arraigned of murder or manſlaughter, it is not a ſufficient verdict for the Iurie to ſay, that the priſoner killed the dead man in his owne defence, but they muſt ſhew ſpecially how: And though it be ſpecially found vpon the indictment, yet the priſoner ſhall not bee diſcharged, vntill he hath purchaſed his Charter of pardon; for that it is a confeſſion by implication of the indictment: Or otherwiſe he ſhall wholly eſtrange himſelfe from the fact, and plead not guiltie. And this is done to the intent to induce a forfeiture of his goods, which he forfeit for the ſaid offence: for the better corroboration and eſtabliſhment whereof, the Statute of Anno 6.E.1. made at Glouceſter, was ordained, by which it is enacted, That no writ ſhalbe awarded out of the Chauncerie touching the death of a man, to enquire if a man killed another by miſaduenture, or in his own defence, or in other manner without felonie: but the priſoner ſhall remaine in the Gaole vntill the comming of the Iuſtices in Eire, or aſſigned to deliuer the Gaole, & then he ſhall put himſelfe vpon the country before them of good and euill: And if it be found by the countrey that he did it in his owne defence, or by miſaduenture, the Iuſtices ſhal giue intelligence thereof to the King, & the King ſhall giue him pardon, if he pleaſe. And ſo note that though by this ſtat. the life of a man is meant to bee pardoned, who doth kil another by miſfortune, or in his owne defence (for the which by the common law he ſhould haue bin hanged) yet his goods do remain forfeit to the King as they were at the common law, Et ipſe in miſericordia dñi regis. 43.Aſſ.p.11. 26.H.8.11. 2.E.6.I.9. 21.E.3.17.

Why the goods ſhalbe forfeited.

17 Whereas the foreſaid Statute of Anno 6.E.1. hath ordayned, That the priſoner ſhall put himſelfe vpon the Enqueſt of good & euill, that is to be intended, when he is indicted of murder, or homicide, & not where in the inditement the ſpeciall matter is found: for to ſuch an indictment of murder or homicide,

The priſoner indicted muſt put himſelfe vpon the countrey. 4.H.7.2. Kel.fol.53. 26.H.8.5.

micide, he muſt plead not guiltie, becauſe it is no plea to plead the ſpecial matter, viz. that he killed the dead man in his owne defence, for then it ſhould bee as a iuſtification of the offence, whereas this kind of homicide is in no manner iuſtifiable: wherefore he muſt plead not guiltie, and then the ſpecial matter being found by verdict, ſhall giue him aduantage.

How he ſhall be diſcharged who killeth a man in his own defence.

18 He that is in this maner charged for the killing of a man in his owne defence, ſhall not bee diſcharged thereof, vntill he hath obtained the K. pardon, or be acquit thereof, and then his diſcharge ſhalbe in this manner, viz. if he deſire to purchaſe his pardon, he ſhal firſt be let to mainprize, and then ſhal ſue to
Fl. Com. 116, 361. Pl. N. B. 246. haue the Record certified by the Iuſt. before whom he was arraigned to the Chancellor of England, who ſhal make him a charter of pardon, without ſpeaking to the K. for the giuing of intelligence to the K. whereof the foreſaid Statute of Glouceſter maketh mention, is intended to certifie him in the Chancerie: for that in Law the King is alwaies ſayd to be preſent in the Chancery, to giue eare to euery of his ſubiects petitions.

Homicide by miſaduenture.

19 Homicide by miſaduenture is when any perſon without any euil intent doth a thing that is lawful, or which is not prohibited by the law, and yet another is ſlaine, or commeth to his death thereby: as if a man caſteth a ſtone at a bird, or a beaſt, & another man or woman paſſing by the way is ſtricken thereby, & dieth: Or if one man be in felling of a tree, and the ſame tree, or ſome arme a bough thereof falleth vpon another perſon, & killeth him: Or if one do ſhoote an arrow at a But, or other marke, & another paſſing that way is killed therewith: Or if one man do let a ſtone or a peece of timber fall from a houſe, or out of a window, and another paſſing that way is killed by it, this manner of killing is homicide by miſaduenture, for the which he that doth kill ſhal haue his
Fl. Com. 102, 254. 51, 6 Ed. 1. 9. pardon of courſe, as it doth appeare by the before reherſed ſtat. of Glouceſter. & alſo he ſhall forfeit his goods, as in the foreſaid caſe of killing of a man in his owne defence. But in this caſe it is to be conſidered, whether he that committed this homicide by Miſaduenture was then buſied in a thing that was lawfull, or vnlawfull, for if he were doing of a lawfull act, as if the Schoolemaſter do in reaſonable manner beat his Scholler for correction onely, or the maſter his ſeruant, and after the Scholler or Seruant dieth: Or two men doe by conKel. fol. 108. 136. ſent wreſtle one with another, and one giueth the other a fal and hurteth him, whereby he dieth: Or one doth play with the other at hand ſword by conſent, and one of them giueth the other a blow, or thruſt, wherby he dieth: or if a man do caſt wood, ſtone, or other thing from a cart, a houſe, or from a window, barrel, or ricke, & another is oppreſſed therewith, and dieth: Or if a man being in due and conuenient time doing any thing that might breede danger to paſſengers thereby, do crie out with ſo loud and audible voice to giue warning therof, that any other which trauelleth that way may heare and flie the perill, and yet one careleſſe and not reſpective of his life and ſafetie is oppreſſed therP. 11. H. 7. 33. with and dieth: Or where two men do run at Tilt, Iuſt, or fight at Barriers together by the K. commandement, and one of them doth kill another, in theſe caſes and the like the offences ſhalbe adiudged as homicide by miſaduenture. But if a mã being in doing of an vnlawful act, as caſting of ſtones into a high way, where men doe vſually paſſe, or ſhooting of arrowes into a Market, or other place, whither men doe vſually reſort, or fighting at Barriers, or running at Tilt, or Iuſtes with others without the kings commandement, whereby a man is ſlaine: in theſe laſt ſpecified caſes it is felonie at the leaſt, viz. manſlaughter,

What is homicide by miſaduenture.

slaughter, if it be not murder; for the offendor being doing of an vnlawfull act by his owne will, the Law will construe his meaning and will therein by the succesſe of the act. As if two men be fighting together, and a third man commeth to part them, & he is slaine, by one of those two without any malice prepenced, or euill intent in him that slue him: this is murder in him that killed him, and not Homicide by misaduenture, because they both that fought together were doing of an vnlawfull act. And if they both that did fight together, came thither with malice prepenced, one intending to kill the other, then is it murder in them both. Fi. Cor 262. 22. Ass. p 71. 2. & 3 P.M. Dyer 128.

The like order in misaduenture as in his owne defence.

20 The same order shalbe obserued in the pleading, verdict, forfeiture, and pardon of one which killeth another by misaduenture, as shalbe of him who slayeth another in his owne defence: And the before rehearsed Statute of Gloucester shall extend as well to the one as to the other. St 6. Ed. 1. 9.

Homicide by murder or manslaughter.

21 Homicide by murder is when one man vpon malice prepenced doth kil another feloniously. And because it should be certainly knowne to all persons, which offences should be adiudged murder, by a Statute made at Marlbridge Anno 52. H. 3. it was ordained, That murder from henceforth shall not be iudged before the Kings Iustices, where it is found missortune only; but murder shalbe intended vpon them which be feloniously slaine, viz. with a premeditate and malicious mind. And some doe define murder to be a secret killing of one man by another, none being present, nor none knowing thereof. But if one man kill another vpon malice prepenced, the law doth not respect whether he doe kil him secretly, or openly, or whether he that was slaine be an English man, or other countrie man, so that he liued vnder the kings protection: Neither doth the law regard who gaue the first blow, for though he that was slaine did strike the first blowe, yet if he were slaine vpon malice prepenced, it shalbe adiudged murder in him that killed him. And manslaughter, otherwise called Chance-medley, is when two do fight together vpon the suddaine, without any malice precedent, and one of them doth kill the other; in which case the offendor shall haue his Clergie. St. 52. H. 3. 26 Pl. com. 261 Pl. com. 262.

What is murder.

What is manslaughter.

The name of murder.

22 The name of murder is an old and auncient terme, and it is the rather continued to make a difference betwen Homicide committed by Chance medley, and Homicide committed by malice prepenced. And therefore if a man be indicted of murder, a pardon of al felonies will not excuse & discharge him; as it appeareth by the Statute of an 13. R. 2. which hath ordained, That no charter of pardon shalbe allowed before any Iustice for murder, for the death of a man slaine by a wait, assault, or malice prepenced, Treason, or Rape of a woman, vnlesse the same murder &c. be specified in the same Charter: For murder is a more grieuous and hatefull offence in the hearts and eares of men, than other felonies be. And yet if a Commission be granted to certaine persons to enquire of all felonies, they may thereby take indictments of murder, though a pardon of all felonies will not auaile him who hath committed murder; but that is in respect of the Statute aforesaid. Sta. 13. R. 2. 1 Stat 2. 5. Pardon, 5. Kel. fol. 91.

Murder more grieuous than felonie.

Wilfull poysoning.

23 By a Statute made Anno 1. Ed. 6. it was ordained, That all wilfull killing by poysoning of any person or persons that at any time hereafter shall be committed or done, shall be adiudged and taken wilfull murder, of malice prepenced: and that the offendors therein, their aydors, abettors, procurers, St. 1. E. 6. 12.

curers, and councellours ſhall ſuffer death, and forfeit in euerie behalfe, as in other caſes of wilfull murder of malice prepenced.

24 To the end that ſtabbing, and killing men on the ſodaine, done by many inhumane and wicked perſons, in the time of their rage, drunkennes, hidden diſpleaſure, or other paſſion of mind, may be from henceforth reſtrained through feare of due puniſhment to be inflicted on ſuch cruell and bloodie malefactors, who heretofore haue beene thereunto imboldened, by preſuming on the benefite of Cleargie: Therefore by a Statute made Anno 1. Iacob. it was enacted, That if anie perſon or perſons ſhall ſtabbe, or thruſt anie perſon or perſons, that hath not then a weapon drawen, or hath not then firſt ſtricken the partie which ſhall ſo ſtabbe or thruſt, ſo as the perſon or perſons ſo ſtabbed or thruſt ſhall die within the ſpace of fiue moneths then next following (although it can not be proued that the ſame was done of malice forethought) yet the partie ſo offending, and being thereof conuicted by verdict of twelue men, confeſſion, or otherwiſe, according to the Lawes of this Realme, ſhall be excluded from the benefite of his or their Clergie, and ſuffer death, as in caſe of wilfull murder. Prouided alwaies, that this Act ſhall not extend to any perſon or perſons, which ſhall kill any perſon or perſons, ſe defendendo, or by miſfortune, or in any other manner than as is aforeſaid: nor ſhal extend to any perſon or perſons, that in keeping and preſeruing the peace, ſhall chance to commit manſlaughter, ſo as the ſaid manſlaughter be not committed wittingly, willingly, and of purpoſe, vnder colour or pretence of keeping of the peace: nor ſhall extend to any perſon or perſons, which in chaſtiſing his child or ſeruant, ſhall beſides his or their intents or purpoſe, chance to commit manſlaughter.

Stat. 1. Iac. 8

Stabbing to death wilfull murder.

Co. lib. 4. 40

25 If vpon a fray made, the Conſtable with others to aſſiſt him, doe come to part the fray, and to preſerue the peace, and in doing of his office, the Conſtable, or anie of his aſſiſtants ſhalbe ſlaine, this is wilfull murder in him that ſlew him, although the murderer did not know the partie whom he killed, and although the fray was on the ſodaine: Becauſe the Conſtable and his aſſiſtants came by authoritie, warrant, and commaund of the Lawe to keepe the peace, and auoide the daunger which might enſue by the breach thereof: And therefore the Lawe doth adiudge this murder, and that the murderer had a prepenced malice in him, to oppoſe himſelfe againſt the Lawe and the Iuſtice of the Realme. And if the ſhirife or any of his bailifes, or officers be killed in the execution of the kings proceſſe, or in doing of their office, this is murder. And it is murder, if a watchman be killed in watching, and doing of his office; for in thoſe caſes the Lawe doth conſtrue the offence, not onelie as done to the perſon that is ſlaine, but to the office of execution of iuſtice, or the keeping of the peace, which the law had impoſed vpon him that was ſlain, and ſo the offendor by killing of this man, hath done as much as in him lieth, to reſtraine the execution of iuſtice, or to hinder the preſeruation of the peace.

Conſtable or other is ſlaine in parting of a fray.

The ſhirife or his officer is ſlaine in execution of proceſſe.

Plo. Com. 100

26 If a man goe with malice prepenced to fight with an other, and to kill him, and a third perſon ſeeing them fighting, goeth on the ſodaine without malice, to take the part of him that went with his malice, and to fight for him, and then they two ſtrike and kill the man that was by them aſſaulted: This is wilfull murder in the firſt man which went with the malice prepenced to kill, and but manſlaughter, and no murder in the other who went to

Murder and manſlaughter committed in the death of one man.

take his friends part, and had no malice prepenced to kill. As if the maſter vpon malice prepenced doth lie in the way to aſſault and kill a man, and taketh ſome of his ſeruants with him that hee doth not acquaint with this malicious intention, and the maſter doth aſſault the ſame perſon who he did lie in wait for, and doth fight with him, and the ſeruants doe take their maſters part, and alſo fight with the partie aſſaulted, and they all together do kill him, this is wilfull murder in the maſter, and but manſlaughter in the ſeruants, for that in them there was no malice prepenced towards the party ſlaine. But if the maſter had made his ſeruants priuie to his intention, and they had gone with him and killed the other, it ſhould haue been adiudged murder in the ſeruants alſo.

A man bearing malice to one doth kill an other.

27 If a man vpon malice prepenced doe lie wait to kill an other man, and doth meete him, aſſaile, and fight with him, and a third man being in the companie of him that is aſſailed doth fight, and defend him. In this caſe if the firſt man that made the aſſault doe kill the third man, who toke part and defended the ſecond man that was aſſailed, it is in him wilfull murder, though at the firſt he did beare no malice to him that he killed, neither knew him. But when the firſt man did beare malice to the ſecond man that hee firſt aſſaulted, and meant to haue killed him, and to haue put his intended malicious purpoſe in execution againſt him, and ſlew one other who reſiſted his purpoſe: the Lawe doth conſtrue it that he carried a malicious and reuenging mind againſt all thoſe that did reſiſt his wicked purpoſe. And therefore as hee ſlew one in the defence of an other, ſo is his malicious and murdering minde, and intention expounded to be tranſferred from the one to the other: and hee ſhall be adiudged a murderer, as if he had killed the firſt man. And the ſame lawe is, if one man doe lie in wait in a place to kill an other man, and a ſtraunger doth come to the ſame place, and he that doth lie in wait to kill, miſtaking the man, doth kill that ſtranger, thinking he had beene the ſame perſon which he did meane to kill: This killing ſhall be adiudged wilfull murder, for it is grounded vpon malice prepenced, though it were not executed vpon him to whom hee did beare the malice. And therefore it ſhall be adiudged the like offence, as if hee had ſlaine the ſame perſon that hee meant to haue killed. And ſo it is, if a man vpon malice prepenced doe ſhoote at one man with intent to kill him, and his arrow or pellet doth kill an other man to whom he did beare no malice, this ſhall be adiudged murder in him, for in his act doing he intended murder: and ſeeing he directed his arrow to kill one man, and that ſlew an other, the offence ſhalbe accoũted in equal degree, as if he had killed him whom he meant to haue ſlaine, for the end of the fact ſhal be iudged by the beginning thereof, and the later part ſhall taſte of the firſt, and the firſt part, which was the ſhooting of the arrow or pellet, was grounded vpon malice prepenced, and a murdering mind, and ſo the offence in Law ſhalbe iudged wilfull murder. Plo. Com. 101

Giuing poiſon to one, and another taketh it, and dieth.

28 The huſband did giue to his wife a roſted apple, wherein hee had put poiſon, with intent to poiſon and kill her, and the wife not knowing the intent of her huſband, nor that the apple was poiſoned, deliuered the ſame apple in the preſence of her huſband to a yong child of their owne to eate, who did eate of it, and died thereof within few dayes after: This was adiudged wilfull murder in the huſband, for that he deliuered the poiſoned apple, with intent to kill one perſon, and ſeeing by his act death did enſue, although it was to another perſon than he meant to kill, yet it ſhalbe adiudged murder in him, Plo. Com. 474

him, for he was the originall founder, and only cauſe of this death: and this murder ſhould be vnpuniſhed, if he ſhould not be puniſhed therefore; for the wife which deliuered the poiſoned apple to her owne child, could not be guilty of any offence, for that ſhe was ignorant of the miſchiefe pretended. But if one doe lay ratſ-bane, or other venomed thing in a houſe or place, with intent to kill rattes, mice, or other vermine, and a man or woman doth eate of it, and dieth thereof, this is no murder or other felony in him that laied it, for that he had no intent to hurt any man or woman.

Mir. El. Dict. 186. 29 An aduonterer and a harlot being by him begotten with childe, did agree, that after the womans deliuery, the childe ſhould be killed, whereupon the mother, after her deliuery, perſwaded the Midwife to kill the childe, who did it accordingly, viz. ſhe cut the throate of it: In this caſe the mother and midwife were adiudged principall murderers, and the aduouterer, who was acceſſary before the birth of the childe, and the murder done, was adiudged to continue acceſſary after the murder done, and to ſuffer death without the benefit of his Clergie. Two agreeing vpon a murder, and one of them doth it.

Fitz. Cor. 383 30 If a man intending the death of an other, doth beate him ſo grieuouſly that he doth leaue him by all the beholders iudgement thought to be dead, and then doth flie away, and after the other doth reuiue, and liue, this is not felony in him that did that violence, though it doth plainely appeare that he had a meaning to kill him: for it is not felony, except the party ſtricken be indeede killed, and die within a yeere and a day after the ſtripes giuen. But on the other ſide, if one man doe ſtrike another, with intent onely to beate him, yet if he die of this battery within a yeere and a day after, it is felony in him that did ſtrike him. For though, as Bracton affirmeth, the old Lawe of this Realme did hold, Quod in maleficijs ſpectatur voluntas & non exitus, & nihil intereſt vtrum quis occidat, an cauſam mortis præbeat: But now we ſay, Lex antiqua mutatur, and doe affirme, Quod exitus in maleficijs ſpectatur, & non voluntas duntaxat. Meaning without act is not homicide. Act without meaning is homicide.

Co. lib. 4. 40 31 A man brought drinke to another that was mingled with poiſon, and aduiſed him to drinke it, telling him that it would be a meane to procure him to get a childe of his wife; by reaſon of which perſwaſion, he to whom that poiſoned drinke was brought, did receiue it, and after drunke it in the abſence of him who brought it vnto him, and ſhortly after died: In this caſe he that brought the drinke was adiudged a principall murderer, though he was not preſent at the time of the receipt of the drinke: or otherwiſe, he ſhould haue bin guilty of that horrible offence, and yet haue eſcaped vnpuniſhed, for there was none in this caſe to whom he could be acceſſary. And ſo note this for a ſpeciall caſe where a felonie is committed, and neither principall nor acceſſaries be preſent at it. Homicide by giuing poiſoned drinke to another.

Fitz. Cor. 350 11. H. 4. 13. 32 If ſeuerall perſons aſſemble together to do a diſſeiſin, to breake a houſe, or commit any vnlawfull act, and one of them killeth a man, he and all the other ſhalbe adiudged principall felons, becauſe they all came to do an euill act, though not that act, as if they all had come to haue killed or robbed one man, and after they killed, or robbed an other. Many doe attempt an vnlawful act and one of them committeth homicide.

2. Ed. 3. 18. 33 A man was indicted that he did felonioufly carrie his owne father be-

 Homicide by carrying a broad.

ing ſicke againſt his will in a frostie and cold time from one towne to another, whereof he died; and this was adiudged felonie in him: for in this case the ſonne had a meaning that his fathers life ſhould be ſhortened, and he brought to his death.

If man dieth in the hands of a Phiſition or Surgion.

34 If a Phiſition or Surgion hath a man in his cure, who dieth being in his cure, or at any time after: this is not felony in the ſame Phiſition or Surgion, becauſe he did not any thing to his patient with a felonious intent, but againſt his will. And moreouer, it is not to be diſcerned whether the man came to his death by any wilfull default in the ſaid Phiſition, or Surgion, or by his former infirmitie, or other cauſe. Fitz. Cor. 183

Homicide vpon the euill words of an other.

35 Anno 3. Ed. 3. Itin. North. it was preſented, That through the euill words of a woman, two men did fall out, and fought, and one of them killed another: and this was adiudged felony in the woman. But it muſt be intended, that the woman by her words did perſwade, counceil, or aduiſe them, or one of them to fight with the other, and ſo was acceſſarie before the felonie committed. Fitz. Cor. 332

Homicide by a frantiche man.

36 A man that is franticke, though he kill an other man, can not commit murder, for he hath not a felonious intent, nor doth carrie within him malice prepenced to any, neither doth know what he doth. And therefore he is not to be attraigned for the killing of a man in his Lunacie, though after he doth recouer his memorie, neither ſhall he be inforced to ſue for his pardon. And the ſame law is of a man that is deafe and dumbe, who can not commit murder, for he hath not a felonious intent, neither doth he know what he doth. And therefore if he kill a man he ſhall not be attraigned thereof, nor driuen to ſue for his pardon. But if a man that is drunck, do in his drunckenneſſe kill another man, it is felony, and he ſhall be hanged therefore, for it is voluntarie ignorance in him to be drunck. M. 21. H. 7. 13 Fitz. Forf. 43. Hi. Dower 183 Fi. N. B. 202. d F. co. 193. 352 Co. li. 4. 42 26. Aſſ. pla. 27 Plo. Com. 19. Co. lib. 4. 125.

Homicide by an infant.

37 An Infant of the age of twelue yeares, or aboue, may commit murder, and ſo may an Infant of the age of eight, or nine yeares, if it may appeare (by hiding of the perſon ſlaine, or by any other act) that the aboundance of his malice doth exceed the tenderneſſe of his yeares. But if an enfant of tender and yonger yeares doe kill a man, this is no felonie, becauſe he wanteth diſcretion and vnderſtanding, and the Law will impute it to the ignorance which commeth to him by nature. 3. H. 7. 2. & 12 12. Aſſ. pla. 30 Plo. com. 19

Homicide by a beaſt.

38 If a man hath a beaſt that is accuſtomed to doe hurt, and the owner knowing thereof, doth not tie him, or otherwiſe keepe him faſt ſhut vp, but ſuffer him to goe at libertie, and after that beaſt killeth a man: this is felonie in the owner, for by his ſufferance of the beaſt to goe at libertie, the owner doth ſeeme to haue a will to kill: or that he vſed this beaſt as an inſtrument wherewith to kill. And this was a Law ordained by Alured king of the weſt Saxons. Fitz. cor. 321 Alured.

In homicide the partie killed muſt be in eſſe.

39 To make it Homicide, it is requiſite that the partie killed be in Eſſe, viz. in rerum natura: for if a man kill an infant in his mothers wombe, this is no felonie, neither ſhall he forfeit any thing for it, and that for two cauſes, the one, becauſe the thing had no name of Baptiſme, the other, for that it Fitz. cor. 263. 22. Aſſ. pla. 94

it is hard to iudge if the infant died of that batterie, or not, or vpon some other cause. Wherefore a man being indicted in the Kings Bench, for that hee did beate a woman great with childe with two children, so that one of the children died presently, and the other was borne, baptised, and had a name of baptisme giuen, and within two daies after that childe also died by the hurt it receiued by the foresaid beating: this was adiudged no felony, for the reasons aforesaid: But if a woman being deliuered of a childe, doth presently kill it before it be baptised, this is felonie in her, though the child had no name of baptisme, because the child was in rerum natura before it was killed, and it is knowne by whom, and what meanes that child came to his death.

As 3. Ass p. 2 M. 2. Ed. 3. 24

Fitz. cor 418. M. 2. El. Dyer 186.

Fitz. cor. 303

40 If a man doe beate, or otherwise hurt another, whereby hee dieth, it is requisite to make it homicide, that the party doe die within a yeare and a day next after the battery, or hurt done: or else the Law will not adiudge it homicide, or that the partie stricken did die of that beating or hurt. And the same Law is, if poison be giuen by one man to another, whereby hee dieth, the Law will not construe it to be murder, vnlesse the party doe die within a yeare and a day next after the poison receiued.

In homicide, the party must die within a yeare and a day.

Homicide by felo de se.

41 As a man may commit felony in killing of an other, so he may commit felonie in killing of himselfe, and then the Law doth aptly call him felo de se: for though Homicide is most fitly and commonly termed where one man doth kill an other, yet the same phrase may in good congruitie of speech be well applied to one that killeth himselfe, for there is an Agent and a Patient, a killer, and one slaine, and both in one and the selfe same person. And though there may be many causes why a man may kill himselfe, as there be many and seuerall humours, opinions, distractions, and fantasies in men, yet most commonly he becommeth felo de se, and felониously killeth himselfe, who being guilty of anie grieuous crime is apprehended for the same, or vehemently suspected, or accused thereof, or being wearie of his life, for extreamitie of paine or pouerty, as being not able to kill his enemy, or to be reuenged of him according to his desire, doth therefore kill himselfe, &c. which felon of himselfe shall forfeit to the King, his goods, chattels, reall and personall, and debts, but not his lands: for the Law doth so greatly fauour inheritance, that it shall not escheate without attainder indeede: Neither shall his wife forfeit her dower, nor his blood shall be corrupt. And the reason why the King shall haue the goodes, chattels, and debts of felo de se forfeited vnto him, is, for that the king hath lost a subiect, and the same subiect hath broken the Kings peace, in killing of himselfe, and giuen an euill example to his people, and hath fled from, and escaped the triall of the Lawe, and hee himselfe was the cause whie hee could not be tried by the Law. But the goods of felo de se be not forfeited vntill his death be presented and found of Record: And therefore those goods can not be claimed by prescription. And if felo de se be cast into the Sea, or a great riuer, or so secretly buried that the Coroner cannot haue the sight of his body, and by that meanes cannot enquire thereof: Then all such Iustices of peace, and Oier and Determiner which haue authoritie to enquire of felonies, shall enquire thereof.

Bracton de coro. ca. 31.

Plo com. 260 261. Fitz. cor. 301. 362. 426

The cause of the forfeiture of felo de se.

Co. lib. 5. 110

42 If an Enfant, furious, or frantick man doe drowne, or otherwise kill himselfe, hee shall not forfeit his goodes, &c. because hee wanteth reason and iudgement. And if a man that is lunatike doe strike himselfe with his knife,

In Enfant or Lunatike killeth himselfe.

Bracton de coron. 2. 37. 21. H. 7. 31. Fitz. cor. 344

or other weapon, and after doth recouer, and notwithstanding dieth of the same stroke that himselfe did giue within one yéare and a day after the stroke giuen, yet hée shall not be adiudged Felo de se, nor forfeit his goods, or any thing therefore: for the Law doth respect what he was at the beginning when he gaue himselfe the stroke, which was the cause of his death, and not what hée was when hée died. For if a man that is frantick from day to day doe kill himselfe, hée shall not forfeit his goods. But the Law is otherwise if a man doe kill himselfe who is frantick but at certaine times, viz. per lucida interualla. Co. lib. 10. Plo. com. 266. Fit. cor. 324.

Killing of himselfe in the stead of another.

43 If a man do strike an other to the ground, and then draweth his knife to kill him, and the defendant lying vpon the ground draweth his knife to defend himselfe, and the assailant is so hastie to kill the defendant that he falleth vpon the defendants knife, and so is slaine: In this case the assailant is felo de se: for hée had an intention to kill, though not himselfe, yet the Defendant. And so as the death intended by him, was by his haste transferred from the Defendant to himselfe, so is the name of a murderer transferred to felo de se. H. 44. Ed. 3. 44.

Forfeiture of lease made to felo de se, and his wife.

44 If a lease of lands be made to the husband, and the wife for the terme of certaine yeares, and the husband goeth into the water and drowneth himselfe in this case, after the death of the husband shall be found by the Coroner vpon the sight of the dead bodie, and the title of this land shall be likewise found by an inquisition taken before commissioners authorized thereunto, the foresaid lease and whole terme of yeares shall be forfeited to the king, and the wife shall haue no part thereof: for this forfeiture shal haue relation to the husbands going into the water, whereupon the drowning did ensue, at the which going into the water hée had the whole interest of the Lease in him so to dispose, that hée might haue alienes the whole interest thereof from his wife: and this going into the water, whereupon this drowning and death did ensue, was a forfeiture or alienation in law of the terme, and was as much in construction of the Law, as if he had then alienes the whole terme to the king. And the finding of the death of this man before the Coroner, vpon the sight of the body, and the finding of the title of this lease before Commissioners, be equiualent to a iudgement that might haue béene giuen against him in his life time, for murder of another person: And if this man had béene outlawed, or otherwise attainted of felonie in his life time, this leafe should haue bén forfeited to the king, and the wife should haue had no part thereof. Plo. com. 258.

No forfeiture of a debt vpon a simple contract.

45 If one which is felo de se, hath a debt due to him vpon a contract, and not by specialty, hée shall not forfeit the debt to the king amongst his other goods and chattels, for that the said debtor shall be rebutted of his law against the king. P. 16. Ed. 4. 7. P. 9. Eliz. Dyer 262.

A villeine felo de se, and then his Lord seiseth his goods.

46 If a villeine doe giue himselfe a deadly wound, and after the Lord of the same villeine doth seise his goods, and then this villeine doth die within a yeare and a day after the wound giuen, and so becommeth felo de se, and after the whole matter is found before the Coroner, those goods of the villeine shall be forfeited to the king, and the king shall haue them out of the Lords possession: for the forfeiture shall haue relation to the wound which the villeine gaue himselfe, and that was before the Lords seisure of his goodes. For if a man Plow com. 260, 262.

man doth giue himselfe a deadly wound, and dieth thereof within a yeare and a day after, all the goods, cattels, & debts which hee had at the time of the blow giuen, or at any time after, shall be forfeited to the King, and in his life time hee hath no authoritie to dispose of them after the wound was giuen.

4. & 5. P. & M. Dyer 160.

47 A man was bound with two Suerties, for the payment of xx. pounds at two seuerall dayes, and the principall debtor, for the securitie of his Suerties, by his Indenture did sell vnto his said two Suerties, twentie Oxen for xx. pounds, with a Prouiso in the Indenture, That if hee did discharge or saue them harmeleſſe of the said Obligation of xx. li. that then the said sale of the xx. Oxen should be void. And it was agreed betweene them, that the principall debtor should haue the occupation and vse of the said xx. Oxen, at the will of the said Suerties, and to be vsed as his owne. And after one day of paiment due to the Obligee, and no money paied by the seller or principall debtor, and before the second paiment was due, the seller killed himselfe, and became Felo de se, hauing those twentie Oxen in his possession, and the Suerties seised the beasts as their owne: And notwithstanding the propertie was in them, by the not performance of the condition, yet it was adiudged that the Aulmoner should haue the beasts, or the money which they were sold for, and then hee should discharge the Suerties against the Creditor. And so the Aulmoner was awarded to haue in these beasts the best estate of the seller, and the same that the Debtor might haue had, if hee had paied the debt at the due times, which were agreed vpon.

One mortgaged his goods and then became felo de se.

48 Though Homicide is most vsually knowne and termed by the killing of one man, or woman, or more, by an other man or woman, or more, yet Hominis cedium, whereof the same word Homicide is deriued, may bee done by some other casualtie; though when a man is slaine by some other mischaunce than by the hand or meanes of an other man, as by the fall of a pit of earth, or stone, or a tree, or killed by a Beare, or Bull, or such like, it is not aptly nor vsually said, that Homicide is committed, but that such a man is slaine.

Homicide by casualtie.

49 When a man commeth to his death by the meanes of any thing that falleth vpon him, or by the meanes of a hurt which himselfe receiueth in falling from some other thing, without the procurement of an other man, that thing which is the cause of his death, shall be forfeited to the King, taken for a Deodand, and distributed in almes. And it is not materiall whether the thing that killed the man was moouing or not at that time when it killed him: for though it were not moouing, yet it shall be taken and accounted as a Deodand, as well as if it were moouing, because all things moouing with the thing which was the cause of the mans death, shall be forfeited, in like sort as the principall thing, according to the old rule, Omnia quæ mouent ad mortem sunt Deodanda. And yet those goods which be forfeited as Deodand, be not forfeited vntill the matter be found of Record, and therefore they cannot be claimed by prescription. And the same Iurie which doth find the death of the man, must also find and appraise the Deodand.

A Deodand.

Fitz. Cor. 403. M. 6. E. 6. Dyer 77.

Co. l. 5. 110.

Fitz. Cor. 398.

50 If a man do fell a tree, and that tree falleth vpon the bough of an other tree, which bough falleth vpon a man and killeth him: in this case both the bough that killed the man, and also the tree which did fall vpon that bough, shal be Deodand: for they both did moue vnto, and were the cause of his death.

A tree and the bough of an other tree do kill a man.

51 If

Falling off a cart, or from a cart.

51 If a man do ride in a cart, and the ſame cart falleth vpon him, and killeth him, as well the ſame cart, as the horſes that drew the cart, ſhall be Deodands. And in like ſort, if a man be in a cart, and by the ſtirring of the horſes which drew the cart, or any of them, he is caſt out of the cart, & dyeth thereof, as well the horſes which drew the cart, as alſo the cart, ſhall be Deodands: for the horſes and cart being faſtned together, be all the cauſes of the mans death. Fitz. Cor. 388. Fitz. Cor. 397. Pl. Com. 328.

Falling from a cart laden.

Falling from a cart that is in lading.

52 If a man fall from a cart laden with Corne, Hay, Wood, &c. and the wheele of the cart breaketh his necke, backe, or &c. whereby he dieth, as well the Corne, Hay, Wood, or &c. as the cart, ſhall be Deodands. But if a man do fall from a cart as he is lading of Corne, Hay, Wood, &c. by the ſtirring of the horſes, and thereby breaketh his necke, backe, or &c. whereby he dieth, the cart and horſes ſhall be Deodands, but not the Corne, &c. for that the corne &c. were not the cauſe of his death. If a man that doth drive a cart, do clime vpon one of the wheeles of the cart, to gather apples, plums, or &c. and do fall from that wheele, and breaketh his necke, backe, or &c. wherof he dieth, if it be proued that neither the horſes nor cart did ſtirre, then the wheele of the cart onely ſhall be a Deodand, and not the horſes, nor the reſidue of the cart, for that none of them did moue to the carters death. Fitz. Cor. 326. Fitz. Cor. 326. Fitz. Cor. 409.

Falling from a horſe into the water.

A horſe killeth a man.

From what time a Deodand ſhal haue relation.

53 If a man ride into the water, to water a horſe, and then falleth from the horſe, and is drowned, the horſe ſhal be a Deodand. And if a horſe, bull, boare, &c. doth ſtrike a man, and after he dieth of that blow, the horſe, bull, boare, &c. ſhal be a Deodand. And if the owner of the horſe that did giue the ſame mortal blow, do alien the horſe to an other betweene the time of the ſtroke giuen, and the death of the man, yet the King may ſeiſe the horſe as forf. for a Deodand: for the forfeiture ſhall haue relation from the ſtroke giuen, which was the cauſe of the mans death. Fitz. Cor. 401. Fitz. Cor. 298. Pl. Com. 260.

A beame of a bell of a Church.

54 If a beame whereupon a bell in a Church doth hang, doe fall vpon a man, and kill him, as well the beame as the bell ſhall be Deodands, notwithſtanding that they were before the gods of the Church, and in a ſort Deo dicatum. But if a man be digging in a pit, mine, or quarrey of ſtone, marle, gravel, ſand, coale, or turfe, and a great heap of earth do fall vpon him, and kil him, the ſame heape of earth onely ſhall be forfeited to the king, and not the whole pit, mine, or quarrey. Fitz. Cor. 405. Fitz. Forſ. 20.

The wheele of a Mill.

55 If a man do fall from a bridge into the water, and is caried by the force of the ſtreame vnder the wheele of a mil, and thereby is ſlaine, the wheele of the mill only ſhalbe a Deodand. If timber, bords, wainſcot, or other goods, do fall vpon a man, and oppreſſe him to death, the ſame ſhall be a Deodand. Fitz. Cor. 389. Kel. fol. 68.

Falling from a horſe againſt a trunke.

56 If a man falleth from his horſe, and breaketh his head, necke, backe, &c. againſt a trunke, peece of timber, or any other thing, whereby he dieth, the horſe onely ſhall be a Deodand, and not the trunke, timber, or &c. becauſe it did not moue. Fitz. Cor. 314.

Falling from a hovel or ricke.

57 If a man fall from a ricke or hovell of corne, hay, or &c. whereby he is killed, the ſame hovell or ricke ſhall be forfeit to the King as a Deodand. And ſo Deodands may be of ſome things that a man doth moue vnto, or from them, as well as of thoſe things which moue to a man to kill him. Fitz. Cor. 348.

58 If

58 If a man do fall from a ship that is sailing, and dye thereof, neither the marchandise, nor any other thing in the ship is the cause of his death, but onely the ship, and therefore the ship only shalbe a Deodand. And that ship must be vpon the fresh water, for if it be vpon the salt water, and one doe fall from it, then it shall be no Deodand. Falling from a Ship.

Bracton. Britton.

59 If he that doth come to his death by any casualtie, be within the age of xiij. yeares, nothing shall be forf. to the king as a Deodand for him, for the forme of the Presentment is, A. filius B. vltra ætatem quatuordecem annorum: sed Quære. within the age of xiij. yeares.

Fitz. Cor. 389.

60 The Shirife of that Countie where a Deodand shall be found to be, shall be charged with the price of euery Deodand, and shall answere for it, and he shall leuie the value thereof of the same Towne where it falleth, notwithstanding it was not committed to them to keepe: And therefore when such a mischance is found, the presenters thereof must also find and appraise the Deodand. The Shirife shall be charged with the Deodand.

Fitz. Cor. 298.

61 If a man be found dead in the field, his apparell, and the money which he hath about him, shall be giuen to a Church, and shall be distributed to the poore &c. and it shall not be taken as a Deodand, for it doth varie from the nature of a Deodand, being no cause of his death. But that distribution shall be in case where the same man is vnknowne, for if he be knowen, his money, apparell, and other things about him, shall be deliuered to his executors, or administrators, or to the Ordinaris. A man found dead in the field.

Fitz. Iudicial. 27.

Felonies

Felonies by the Common Law: Larcenie, Theft.

What is Larcenie.

Larcenie is a fraudulent taking away of an other mans goods, aboue the value of twelue pence, with intent to steale them, without the knowledge of him whose the goods bee: For if the goods do not exceed the value of xij. pence, it is not Felonie, but petit Larcenie, for the which the offendor shall be imprisoned, or otherwise punished by the discretion of the Iustices before whom hee is arraigned, and also shall forfeit his goods, but hee shall not be put to death. And this intent of stealing to make it Larcenie, ought to be at the time when the party doth first come to the possession of the goods, for if the partie doth come lawfully to the possession of the goods, though hee hath an euill intent after, to conuert them to his owne vse, it is not felonie in him: As if a man doth deliuer goods to an other, who after doth conuert them to his owne vse, it is not felonie in him, for no felonie is intended to be done but with violence, and vi & armis, & contra pacem, which cannot be supposed in this case, seeing they were deliuered vnto him by the owner of them, and so hee came lawfully to them.

17.H.8.22.

Petit Larcenie.

Fitz. Cor. 430. 451. 27.H.8.22.

The intent of the stealing must be at the time of the receit of the goods.

13.Ed.4.9.

Stealing goods at seuerall times, aboue the value of xij. pence.

2 If any person at seuerall times do steale seuerall parcels of goods, which parcels being put together, do amount aboue the value of xij. pence, it is felonie, and the offendor shall be hanged. And if two, three, or more together, do steale goods to the value of twelue pence, this is felonie in them all, for the felonie in them is seuerall, though the stealing be ioint.

Fitz. Cor. 415.

Fitz. Cor. 404.

Felonie in seuerall persons.

The Iurie may find an vnder value of the goods.

3 If any person be indicted for stealing of goods aboue the value of xij. pence, and arraigned thereupon, yet the Iurie that passeth vpon his arraignement, may giue a spetiall verdict, and say, that the goods did not exceed the value of eight pence, or ten pence, &c. and then that offence shall be taken for petit Larcenie onely, and the offendor shall be punished by imprisonment or &c. according to the Iustices discretion.

Fitz. Cor. 451.

18.Ass.p.14. 22.Ass.p.39.

Taking away a Tauerners plate.

4 If a Tauerner do set a peece of siluer plate before his guest to drinke in, and that guest carrieth away the peece of plate, this is Felonie in him: for hee had not the possession of the same peece of plate, but the vse thereof onely to drinke in for that time: And the offendor did fraudulently take the plate away, with intent to steale it, without the knowledge of the owner thereof. A man being lodged in an Inne, did rise in the night, and carrie lynnen and other goods of the Inne keepers, out of his chamber where hee was lodged, into the

P.13.Ed.4.9.

27.Ass.p.30.

the hall, with intent to ſteale them, and then went to the ſtable to ſeeke his horſe, and the Oſtler toke him therewith, this was adiudged felonie, and yet the goods were not carried out of the houſe of the owner of them, but taken out of the place where he had aſſigned them to be. And ſo it is if a man do take vp another mans horſe in his cloſe, with intent to ſteale him, and the owner, or ſome other, doth apprehend the partie with the horſe, before he is gone out of the cloſe, this is felonie.

21.H.4.14. 3.H.7.12. 13.Ed.4 10.

5 If a man commit money to his ſeruant to keepe, or plate to his Butler, or veſſell to his Cooke, to be vſed in his houſe, or a horſe to his Horſekeeper, to be kept and dreſſed, or ſheepe to his Sheepheard, to be followed and paſtured, and the ſeruant who hath the ſame thus committed vnto him, doth goe away with them, this is Felony by the common law in that ſeruant: for theſe goods were alwayes in the Maſters poſſeſſion, and kept and vſed to the Maſters benefit. But if a man deliuer a horſe to his ſeruant, to ride to the Market, or money to carrie to a Fayre, or to pay to an other, or to buy cattell, or other things, and the ſeruant doth go away therewith, this is not felony: for the Maſter deliuered the ſame to his ſeruant, and therefore he came lawfully by the poſſeſſion of it. See Felonie by ſtat. 12.

A ſeruant hauing the vſe of his Maſters goods, doth ſteale them.

13.Ed.4.9.

6 If a man deliuer to his ſeruant, or an other, the key of his chamber dore, and he to whom the key is deliuered taketh away the goods in the chamber, aboue the value of xij.d. this is felonie in him: for the goods were not deliuered, but did alwayes remaine in the poſſeſſion of the owner of them.

One hauing the key of a chamber, doth ſteale the goods.

13.Ed.4.9.

7 If a man do bargaine with a Carrier, or other, to carry certaine bales of wares, or other goods to a place prefired, and he taketh them, and carrieth them to an other place, and openeth the bales, & taketh forth the goods within them feloniouſly, and conuerteth them to his owne vſe, this is felony in him: for that this is more than a deliuerie, viz. it is a bargaine, ſo that he receiueth them by the bargaine agreed vpon, and not by the deliuerie, the which bargaine he hath not performed, but hath taken the goods of his owne wrong: and in this caſe the property of theſe goods did alwaies remain in the firſt owner or deliuerer.

A bargaine with a carrier and not a deliuerie of goods.

13.Ed.4.10.

8 If one man do deliuer goods to an other to carrie to a place appointed, and he doth carrie them thither, and then he doth take and ſteale them away, this is felonie in him: for the priuitie of the bailement, and the carriers poſſeſſion was determined, when he had carried them to the place appointed, and therefore what he did after, was feloniouſly done, and of his owne wrong.

A carrier ſteeleth the goods committed.

13.Ed.4.9.

9 If one man do deliuer a Tun of Wine to an other, to carry to a place agreed vpon, if the Carrier ſell or giue away the ſame whole Tunne of wine, it is no Felonie, for it was deliuered vnto him: but if he take out twenty gallons, or other quantitie aboue the value of twelue pence, or &c. then it is Felony.

A Carrier ſteaing part of his charge.

7.H.6.45. 13.Ed.4.10. 5.H.7.18.

10 If a man deliuer goods to an other man to keepe, & after the owner who deliuered them, doth take them away feloniouſly, to the intent to recouer damages againſt the party to whom they were deliuered by an action of Detinue, this is Felony in him that deliuered thoſe goods, & yet the property of the goods was alwaies in him that did ſteale them.

Felonie by taking of his owne goods.

The goods of a Church or Corporation.

11 It is felony to steale the goods of a Church or Chappell, or the goods of a Deane & Chapter, Colledge, or other corporation, or the goods of a corporation during the time of the vacation of the gouernour thereof: and the indictment shalbe, Quod bona domus & Eccleſiæ, &c. 7.Ed.4.14. 9.Ed.4.33.

In what case a maried wife may commit felony, in what not.

12 If a wife doe steale goods by the compulsion of her husband, this is not felony in her: and likewise it is, if she do it by the commaundement of her husband: and if the husband & wife together do steale goods, this shalbe taken the only act of the husband, and not felony in the wife: But a woman alone by her selfe, her husband not being priuy thereunto, may commit felony, and may be principall or accessary: as if a married wife steale goods, or receiue Felons or stolne goods into her house, knowing them so to be, or lock them vp in her cheſt or closet, her husband not knowing thereof: Or if her husband assone as he knoweth thereof, refuseth her company, and his owne house, and maketh his abode elsewhere, in which case the wifes offence shall not be imputed to her husband; or otherwise the law will impute the fault to him, and not to her: for if the husband do commit felony, and the wife knowing thereof, do receiue him, and keepe him company, shee is not thereby accessary to the felony: for a wife cannot be accessary to her husband, for that by the Law of God shee ought not to discouer him or his counsell: which law was first established by Inas, King of the West Saxons. As the husband and wife stealing together the goods of an other, the whole offence shall be imputed to the husband, & it shall be adiudged no felony in the wife: so if the wife do take the goods of her husband, the law will not construe them to be stolne, nor charge her with felony therefore: for at the time of the solemnization of their mariage in the face of the Church, her husband endowed her with all his worldly goods, and so gaue her a kind of interest in them. And if the wife do take her husbands goods, and giue them to an other, this is not felony in him to whom shee did giue them: but if a man do take away an other mans wife and the husbands goods against the husbands will, this is felony. S. Felony by statute 31. That it is felony in the wife to send any money, victual, &c. to her husband, being assembled with others in rebellious manner contrary to the statute of Anno 1. M. 12. 27.Ass.p.40. Fitz.cor.160. Fitz cor.53. Cauti lex 74. Britton. Bracton de coron, ca.32. Inæ lex. Inæ leges 58. A woman taking her husbands goods. Fitz.cor.455. Bro.cor.242.

In what case an infant may commit felony.

13 If an Infant aboue the age of xij. yeares do take any goods of an other mans, aboue the value of xij.d. with intent to steale them, it is felony in him: and some do affirme, that if an infant of any age do take the goods of an other, and that the Iustices before whom he is arraigned doe thinke that he did it with a felonious intent, and had discretion to vnderstand what he did, and the offence, and the perill thereof, that then it is felony in him. And yet Inas king of the West Saxons ordained, That a child of tenne yeares of age should be condemned for Felony. Fitz.Nat.Bre. 202. Bracton. 35.H.6,11. Lex 7.

An Ideot or Lunaticke cannot cõmit Felony.

But an Ideot or Lunaticke cannot commit Felony by the stealing of the goods of an other, for that neither of them doth know what he doth. Co.li.4.124.

Burning of a house or barne Felony.

14 Burning of a house willingly, and feloniously done, is Felonie by the common Law. For the statute of West.1. hath ordained, That they which be taken for the burning of a house feloniously done, be not repleuisable. And if one do burne a barne feloniously in the night, which is adioining to a dwelling house, it is felony by the common law. 8.H.3.153 11.H.7.1.

15 If an indictor, which (with others) hath indicted other persons of Felony,

27.Ass.p.63. Fitz.Corone 2. nie, do therein discouer the Kings counsell, contrarie to his oath, in publishing to others, that he and his companions haue indicted such and such persons, this discouerie is Felonie. S. Treason 9.

Felony in Indictors to discouer their counsell.

16 If an offendor be arrested or imprisoned for felony, or attainted of felonie, and a stranger will take him out of the possession of him that did arrest him, or keepe him in prison, or will take a felon attainted and condemned to die out of the possession of the Shirife, or his Officers, whereby he escapeth, this rescous is felonie, as well in him that made the rescous, as in him that is rescued. And if a stranger do rescue one that is indicted of felony, he may be indicted and arraigned thereof presently, before the principall felony be tried, and if he be found guiltie, he shall be perpetually imprisoned, or otherwise punished at the K. pleasure, but shall not be hanged, because the principall felon is not tried. S. Breaking of prison 5. 10.

Rescuing of a prysoner, felony.

8.H.7.6.

2.E.3.17.

17 When a man doth arrest an other for felony, or any other crime, and after let him go at liberty whether he will, this letting him at liberty is a wilfull escape: and if the arrest of him that escaped, was for felony, it shall be adiudged felony in him that did let him escape: and if it were for Treason, then it shal be adiudged Treason: and if but for Trespas, it shall be adiudged trespas.

9.H.4.2.

wilfull escape is felony.

18 If a man do deliuer cloth to a Tailor to make him a garment, and a felon doth steale that cloth out of the possession of the Taylor, the offendor may be indicted for the stealing of that cloth of the goods of the Taylor, for the Taylor had possession of the cloth, and property also against all others, sauing against him that deliuered it vnto him.

Kel.fol.90.

Goods stolne from him that hath the custody of them.

19 If a Felon do steale an other mans horse, beast, or other goods, & an other Felon doth steale the same from him, the owner of the same horse, beast, or other goods, may haue an Appeal against the first or second Felon at his owne choice, for the property of the goods did alwaies remaine in him: for no Felon can by the Law claime property in any stolne goods.

Goods stolne from a felon.

13.Ed.4.3. 4.H.7.5.

20 Larcenie cannot be committed by taking of sauage beasts found in their wildnesse, as Deere, Pigeons, Hawks, nor by taking of Doues found out of a douecote, nor by taking of Fish in a riuer: for such taking is not the stealing of the goods of an other, seeing that they be no mans goods, neither can any person claime property in them: Neither can Felony be committed in the taking of Apes, Hounds, Thrushes, Squirels, or such domesticall things, kept onely for pleasure, and that but of some speciall persons, and profitable to none. Neither is the taking of Pheasants, Partridges, or Conies, being fowles, and things of warren felony. But it is Felonie, if a man do take out of an other mans douecote, yong Pigeons, which can neither go nor flie, for that the propertie of them is alwayes in him who is owner of the douecote. And likewise it is felonie to take yong Goshawks, or yong Herons breeding in a Parke, or seuerall ground, which can neither go nor flie out of their nests: Or to take Fish out of a pond, or trunke, or to take Swannes, Peacocks, Turkies, Capons, Geese, or Ducks: Or to take a Stag, Hind, Bucke, or Doe, which is marked, and domesticall, and made tame by the owners diligence. And by the statute of Westm 1. it is Felony to take a tame beast, or other thing in a parke by maner of robberie. And it is Felony to kill Sheepe, and take their skinnes,

Of what things Larcenie may be committed, & of what not.

22.Ass.p.95.

28.Ed.4.8.

18.H.8.2.

St.3.E.1.20.

or to pull wooll from Sheepes backes. So that in all the cases aforesaid, the thing so taken or stolne do exceed the value of twelue pence.

Felony must be of personall goods, & not of things reall.

21 The taking away of an other mans goods, to make it felonie, must be of personall things, for if it be of things reall, it is not felonie: As if one cut downe a tree of an other mans, and carrieth it away, or cutteth the corne, or pulleth the apples of an other, and carrieth them away, or hideth them, it is no felonie, because the tree &c. was parcell of the owners inheritance, and not of his personall goods. But it is otherwise, if the owner do cut downe the tree, corne, &c. and an other carrieth it away, then he committeth felony. And likewise, if one do take & carrie away the Lead which coureth a Church, or any mans house, it is no felonie, for it is parcell of the Church, or house, and of the inheritance, and no personall goods. And so it is if an Indenture, or deed Poll, purporting a lease for terme of yeares, or a ward be taken and carried away, it is no Felony: for a lease for the terme of yeares, is a chattell reall, and so is a ward, and not a chattell personall. And the same law is of a writing, or bore of writings, for if it be imbezyled & carried away, it is no felonie, because they cannot be valued: and moreover, for that they concerne inheritance, chattels reals, or things in action: and the taking and carrying away of Treasure troue, Wrecke of the Sea, Waife, or Stray, is not felony, for that the owner of them is vnknowne, and it is vncertaine whose these be, though Bracton termeth the taking away of Treasure troue, Quasi crimen furti. But the offendor who taketh them away shall be punished by fine and imprisonment: And if a Lord do secretly take away his Villaines goods, this is no felonie in him, for he may seise and take them away all openly when he will.

The Lead of a house.

A lease for yeares.

A ward.

Writings.

Treasure troue.

Wrecke of the Sea.

Waife.

Stray.

12. Ass. p. 32. 18. H. 8. 2. Fitz. Cor. 236.

10. E. 4. 15.

Bracton de Corof. cap. 3.

22. Ass. p. 99. Fitz. Cor. 265.

A felony made by statute, and after repealed.

22 If an offence be made Felony by statute, and then one doth commit the same offence, and before he is arraigned thereof, that statute is repealed, by the repeal of the statute the felony is extinct, and the offendor shall not be arraigned thereof, nor punished by force of that statute for that fact.

Brooke Cor. 203.

Thiefe-bot.

23 Thiefe-bot is not when a man doth take his owne goods againe, which were feloniously stolne from him: but Thiefe-bot is properly when a man doth take goods of a felon to fauour him, the punishment of which Thiefe-bot is not as for a felony committed, but only to be ransomed and imprisoned.

42. Ass. p. 5. Fitz. Cor. 353.

Felony committed in one kings raigne, punished in an other.

24 A man that committeth Felony in the time of one king, may be arraigned for it after in the raigne and time of an other king: for the same Law and forme of gouernment, to the which the offence is done, remaineth, though the king dyeth.

1. Rd. 3. 3. Bro. Cor. 177.

Stolne goods carried into seuerall counties

In what gaole a felon shall be imprisoned.

25 If a Felon steale a horse, beast, sheepe, or other goods in one County, and doth carry them into an other County, it is felony in euery County whither he doth carry or driue those goods: and the offendor may be indicted or appealed in any of those Counties, be arraigned, and haue his iudgement there. And if a felon do steale goods, commit murther, or do any other felony in one County, and then flie into an other County, and is taken there, he shall be imprisoned in the Gaole of the County where he is taken, and after shall be removed by the kings writ into the Gaole of the County where he committed the felonie.

Bro. Cor. 170. 4. H. 7. 5. 7. H. 4. 44.

13. Rd. 4. 9.

26 A man

13.Ed.4.9. 26 A man may breake a house to apprehend a felon, or him that is suspected of felony, for it is for the Commonwealth: and the king hath a kind of interest in felony, viz. to cause it to be punished: and where the king hath an interest, that writ or act is a Non omittas propter aliquam libertatem: and so the libertie of a house will not defend him, who hath committed, or is suspected to haue committed felony against the king. But if it were for debt, or trespas, it were otherwise, for that is onely the interest of one particular person. Breaking a house to take a felon.

27 Robbery, in Latin called Rapina, is in his naturall signification, when one man taketh any thing from the person of an other against his will feloniously, although the thing taken be but to the value of a penny, for the which 22.Ass.p.39. Fitz.Cor.115. the offendor shall be hanged. And yet in some case it may be robbery, notwithstanding the party doth not take it from the person of the owner. As if a felon do take any of the goods of an other openly in the place where the owner is present, against his will, this is robbery, though the offendor do not take it from the person of the owner: for he doth it with that violent force, that the owner dareth not, or is not able to resist him. As if one do threaten an other, presently to deliuer his purse, or otherwise that he will kill him, by force of which threats he doth deliuer his purse; this is robbery, as wel as if the felon had taken the purse from the person of the owner by violence, or strong hand: Or if one or more doe take vp a horse out of the pasture of the owner, or driue cattell out of his ground, the owner standing by and loking on the Felon at the same time, this is robberie, so that the felon doth make an assault vpon the owner, or do put him in feare. But if a felon do take money from the person of a man in the high way, and not put his person in feare, it is no robberie, but 5.Eliz.Dyer 224. only felonie, for the which the offendor shall haue his Clergie. What is Robberie. Robberie by threatning. Taking a mans money, but not putting him in feare.

44.Ed.3.14. 4.H.4.3. 28 If two, three, or more, do by force take a man, and by threats compell him to sweare to bring them a certaine summe of money, menacing him, that they will kill him if he do it not, by force whereof he doth bring them the same summe of money, this is robbery, for that he did first sweare, and after bring the money against his will: and yet by this inforced oath he was not bound to bring them the said money, for that the oath was taken for feare of death, and so against his will. And likewise, if Felons come to a mans house in the night to rob him, and the possessor of the house fearing that they will enter his house and rob him, doth cast out vnto them money, or plate, which the felons do take, and then depart, this is robbery, for it is in construction of the law taken from the person of a man, and for feare. Robberie by taking an oath to bring money. Robbery in taking money giuen.

9.Ed.4.26. 29 If one lye in the high way to rob passengers, and draweth his sword against a man that trauelleth the same way, and commaundeth him to deliuer his purse, whereupon the same partie encountreth him, and is too strong for him, and apprehendeth him, or leuieth Hue and Cry, and the offendor is thereby taken, yet this is no Robberie, nor Felony, for there was no act done, though there was an intent and will to robbe, Quia voluntas non reputabitur pro facto. Robbery in will, but not in deed.

30 Burglary is, when one or more persons do in the time of peace breake a house, a Church, a Wall, a Tower, or Gatehouse in the night, with a felonious intent to robbe, kill a man, or commit some other Felonie, for the Fitz.Cor.264. 22.Ass.p.95. which Burglary the offendor shall be hanged, though he take nothing away. What is Burglary.

But that breaking of the house must bee to commit some Felonie, For if the offendor be indicted for the breaking of a house to beat some person, that is but Trespas, but if it be to kill another, then it is Felony. And if a man bee indicted for the breaking of a Close, to kill or robbe another, it is not Burglarie. 13.H.4.8.

Breaking a house, but not entring.

31 If a man doe breake a house, and doe not enter into it, then it is no Burglarie, for a man was indicted, Quod burglariter fregit Ecclesiam in nocte & intrauit, ad deprædandum bona parochianorum in eadem existent sed, nihil abstulit: and this was adiudged Burglarie, for that the party indicted did enter. 1.M. Dyer 99.

No Burglarie in the day.

32 Burglary cannot be committed in the day, but in the night: for all the indictments of Burglary be Noctanter fregit: for though by the statute of 39. Eliz. the benefit of Clergie is taken away from any person, conuicted for the felonious taking away in the day time of any money or goods, of the value of fiue shillings, or vpwards, in any dwelling house or out-house, although no person shall be in the same at the time of the said felony committed, and so that offence is made as penall as Burglary, by the losse of the benefite of Clergie, yet is it not Burglarie, for it may be committed in the day time, & the penaltie of losing of his Clergy is not inflicted, vnlesse the money or goods taken away be of the value of fiue shillings, or vpwards. Stat. 39. El. 15.

Breaking a dwelling house where no person is.

33 If a man hath a mansion house, and he and his family doth vpon some cause goe forth of the house, and in the meane time one doth come, and breake the house in the night, to commit felony, this is Burglarie: for although the owner, nor any of his family were in the house, yet it is his mansion house: for the words of an appeale or indictment of Burglarie be, Domum mansionalem ipsius A.B. fregit. And in like sort, if a man haue two houses, and doth inhabit sometime in one of them, and some other time in an other, and hath a family or seruants in them both, and in the night, when the seruants be out of the house, felons do breake the house, this is Burglarie, for that the house is broken. Co.li.4.40.

Felonies by Statute.

AND now hauing erpreſſed which bee felonies by the common Law, it reſteth that I declare which be felonies by Statute, with the reaſons and cauſes why the ſame ſtatutes were made, ſo farre as I may be warranted by the ſame ſtatutes. And as in Treaſons I began with thoſe Treaſons which did concerne the K. and his chiefe magiſtrates of iuſtice: So in repoꝛting of ſuch lawes and ſtatutes as haue bẽne made foꝛ the ſupply of ſome defects at the common Law, I will begin with a ſtatute which indeuoꝛeth to reſtraine ſuch as pꝛactiſe oꝛ confederat to deſtroy the king, oꝛ his chiefe officers attending on his perſon oꝛ eſtate.

1 FOꝛ as much as by quarrels made to ſuch as haue bẽne in great authority, office, and of counſell with the kings of this Realme, hath enſued the deſtruction of the kings, and thereby the vndoing of this Realme: ſo as it hath appeared euidently, when compaſſing of the death of ſuch as were of the kings true ſubiects was had, the deſtruction of the pꝛince was imagined thereby, and foꝛ the moſt part it hath growne, and bẽne occaſioned by enuie & malice of the kings owne houſhold ſeruants. And foꝛ that by the lawes of this land, if actuall dẽds were not had, there was no remedy foꝛ ſuch falſe compaſſings, imaginations, and confederacies had againſt any loꝛd, oꝛ any of the kings Councell, oꝛ any of the kings great Officers in his houſhold, oꝛ Steward, Treaſurer, Controller, and ſo great inconueniences did enſue, becauſe ſuch vngodly demeanoꝛ was not ſtraitly puniſhed, beforꝛe that an actuall dẽd was dons: foꝛ the remedy whereof, by a ſtatute made Añ 3.H.7.14. it was oꝛdai-
3.H.7.14. ned, That the Steward, Treaſurer, and Controller of the kings houſe foꝛ the time being, oꝛ one of them, ſhall haue full authoꝛity and power to enquire by xij. ſad men and diſcreet perſons of the Checke Roll of the kings honourable houſhold, if any ſeruant, admitted to be his ſeruant ſwoꝛne, and his name put into the Checke Roll of houſhold, whatſoeuer he be, ſeruing in any maner office oꝛ rowme reputed, had, and taken vnder the eſtate of a loꝛd, make any confederacies, compaſſings, conſpiracies, oꝛ imaginations, with any perſon oꝛ perſons to deſtroy oꝛ murder the king, oꝛ any loꝛd of this realme, oꝛ any other perſon ſwoꝛne to the kings Councell, Steward, Treaſurer, Controller of the kings houſe: that if it be found afoꝛe the ſaid Steward foꝛ the time being by the ſaid xij. men, that any ſuch of the kings ſeruants, as is aboueſaid, hath confedered, compaſſed, conſpired, oꝛ imagined, as aboueſaid, that he ſo found by the inquiry, be put thereupon to anſwere. And the Steward, Treaſurer, and Con-

Conſpiring to deſtroy the king, oꝛ any loꝛd &c.

troller, or two of them haue power to determine the same matter according to the law. And if he be put in triall, that then it be tried by other xij. sad men of the same houshold. And that such misdoers haue no challenge but for malice. And if such misdoers be found guiltie by confession, or otherwise, that the said offence be iudged felony, and they to haue iudgement and execution as felons attainted ought to haue by the common Law.

Challenge.

Rauishment of a woman.

2 For that vnlawfull and forcible violence, and also detestable aduowtrie were committed in the rauishment of women, therefore by the Statute of Westm̃ 2. it was enacted, That if any man from henceforth rauish any woman maried, maid, or other woman, where shee doth not consent neither before nor after, he shall haue iudgement of life and of member: And likewise where a man rauisheth a woman married, Ladie, damsell, or other with force, although shee consent afterward, he shall haue such iudgement as before is said, if he be attainted at the Kings suit: for the K. shall haue the suit. St. 13. E. 1. 33.

Abusing a woman vnder x. yeres of age.

3 By a stat. made An̄ 18. El. it was ordained, That if any person shall vnlawfully & carnally know & abuse any woman child vnder the age of x. yeares, euery such vnlawfull & carnall knowledge shal be felony, & the offendor thereof being duely conuicted, shall suffer as a felon, without allowance of Clergie. Sta. 18. El. 6.

The forf. for consenting to a Rape.

4 By a statute made An̄ 6. R. 2. 6. it was ordained, That whersoeuer and whensoeuer Ladies daughters, and other women be rauished, and after such rape do consent to such rauishers, that aswell the rauishers, as they that be rauished, & euery of them, be from henceforth disabled, and by the same deed vnabled to haue or challenge heritage, dower, or ioint feoffement after the death of their husbands, and auncestors: and that incontinently in this case the next of the blod of those rauishers, or of them that be rauished, to whom such heritage, dower, or ioint feoffement ought to reuert, remaine, or fall after the death of the rauisher, or of her that is so rauished, shall haue title incontinently, that is to say, after the rape to enter vpon the rauisher, or her that is rauished, and their assignes, and land tenants, in the same heritage, dower, or ioynt feoffement, and the same to hold in a state of heritage: and that the husbands of such women, if they haue husbands, or if they haue no husbands in life, that then the fathers or other next of their blond haue from henceforth the suit to pursue, and may sue against the same offendors and rauishors in this behalfe. And to haue them thereof conuict of life and of member, although the same women after such rape do consent to the said rauishers. And further it is accorded, that the def. in this case shall not be receiued to wage battell, but that the truth of the matter be thereof tried by inquisition of the countrey, sauing alwaies to our soueraigne lord the K. and to other lords of the said realme, all their escheates of the said rauishers, if peraduenture they be thereof conuict. Sta. 6. R. 2. 6.

D

A woman rauished, conceiued with child

By the opinion of Britton, if a woman at the time of the supposed rape doe conceiue with child by the rauisher, this is no rape, because a woman cannot conceiue with child, if shee do not consent. Britton.

E

A Concubine.

It is a good plea in an Appeale of Rape, to say, that before the rauishment supposed, he kept and vsed the plaintife as a Concubine: or to plead, that though he lay with her, yet he did not carnally know her, for that is the force of the declaration in an appeal of Rape. Bracton.

If

T.9.Ed.4.26 If a man ſhall be charged with a Rape by the way of indictment, or otherwiſe, he ought to be charged expreſly by this word (Rapuit) and not by any other words, notwithſtanding they doe amount to as much as this word (Rapuit) doth; as carnaliter cognouit, or ſuch like. S.Appeales 81.85. F This word (Rapuit) neceſſary in an indictment.

Stat.3.H.7.2 5 By a ſtatute made Anno 3.H.7. it is ordained, That if anie perſon or perſons ſhall take any maid, widdow, or wife, which hath any lands, or goods, or is heire apparant to her anceſtor againſt her will vnlawfully, ſuch taking, procuring, and abetting to the ſame, and alſo receiuing wittingly the ſame woman ſo taken againſt her will, and knowing the ſame, ſhall be felonie: and ſuch miſdoers, takers, and procurers to the ſame, and receiuers, knowing the offence in forme aforeſaid, ſhall be reputed and iudged as principal felons. But this Act doth not extend to any perſon taking any woman, only clayming her as his ward or bondwoman. And by a ſtatute made Añ 39.Eliz. it was enacted, That all and euery ſuch perſon and perſons as ſhalbe conuicted or attainted for any offence made felony by the ſaid Act of 3.H.7. or which ſhall be indicted or arraigned, of, or for any ſuch offence, and ſtand mute, or make no direct anſwer, or challenge peremptorily aboue the number of xx. ſhall in euerie ſuch caſe loſe his and their benefit of clergie, and ſhall ſuffer paines of death without clergie: any former law &c. notwithſtanding. Prouided alwayes, That this Act ſhall not extend to take away the benefit of clergie, but only from ſuch perſon and perſons as hereafter ſhall be principals, or procurers, or acceſſaries before ſuch offence committed. Taking a woman againſt her will. Stat.39.Eli.9. No clergie allowed.

Stat.8.Eliz.3 6 By a ſtatute made Añ 8.El. it was enacted, that no perſon or perſons ſhal bring, deliuer, ſend, receiue, or take, or procure to be brought, deliuered, ſent, or receiued into any ſhip, or bottme, any rammes, ſheep, or lambs, or any other kind of ſheep, being aliue, to be conueied out of any of the Quæns dominions, vpon paine, that euery ſuch perſon, his aidors, abettors, procurors, and comforters ſhall for his firſt offence forfeit all his goods for euer to the Quéne and Informer, that will ſue for them in any Court of Record, wherein no Wl. E. P. &c. And further, euerie ſuch offendor ſhall ſuffer impriſonment one whole yeare, without baile or mainprize, and at the yeares end ſhall in ſome market towne, in the fulneſſe of the market, on the market day, haue his left hand cut off, and that to be nailed vpon the openeſt place of ſuch market. And euery perſon eftſoones offending againſt this ſtatute, ſhall be iudged a felon, and ſhall ſuffer death as in caſes of felonie. But this Act ſhall not extend to any corruption of blood, or be preiudiciall to any women clayming dower by or from anie ſuch offendor. And the Juſtices of Oyer & Determiner, Juſtices of gaole deliuerie, and Juſtices of peace in euery countie and ſhire within this realme of England and Wales, and other the Qu. dominions, ſhall haue full power and authority by vertue of this act to inquire of euery offendor and offendors, contrary to the forme and effect of this Act: and to heare and determine euery offence and offences committed and done contrarie to the forme and effect of the ſame, according to the courſe of the laws of this realme. Tranſporting of ſheepe. The ſecond offence felony.

7 Foraſmuch as diuers euill diſpoſed perſons, being married, did run out of one countrey into another, or into places where they were not knowne, and there became to be maried, hauing another huſband or wife liuing, to the great diſhonor of God, & vtter vndoing of diuers honeſt mens children, and others: Stat.1.Iac.11 therefore by a ſtatute made Añ 1.Iac. it was enacted, That if any perſon or perſons

Felony in marrying vntill the former husband or wife be dead.

persons within his Maiesties dominions of England and Wales, being married, or which hereafter shall marry, do marry any person or persons, the former husband or wife being aliue, that then euerie such offence shall be felony, and the party & parties so offending shall receiue such and the like proceeding, trial, and execution in such county, where such person or persons shalbe apprehended, as if the offence had bin committed in such county where such person or persons shalbe taken or apprehended. Prouided alwaies, that this Act shall not extend to any person or persons, whose husband or wife shalbe continually remaining beyond the seas by the space of 7. yéars togither, or whose husband or wife shall absent him or her selfe the one from the other by the space of seuen yéares together, in any parts within his Ma. dominions, the one of them not knowing the other to be liuing within that time. Prouided also, that this Act shall not extend to any person or persons that are or shall be at the time of such mariage diuorced by any sentence had or hereafter to be had in the ecclesiasticall court, or to any person or persons, where the former mariage hath béene or hereafter shall be by sentence in the ecclesiasticall court declared to be void, and of no effect: Nor to any person or persons, for, or by reason of any former marriage had or made, or hereafter to be had or made within age of consent. Prouided also, that no attainder for this offence made felonie by this Act, shall make or worke any corruption of bloud, losse of dower, or disinherison of heire or heires.

No corruption of blood, or disherritance.

Infected with the plague.

8 By the statute made Ann 1. Iac. it was ordained, That if any person or persons infected with the plague shall be by the maior, bailifes, constables or other head officers of any city, borough, towne corporat, priuiledged place, or market towne, or by any Iustice of peace, constable, headborough, or other officer of the county (if any such infection be out of any city, borough, towne corporat, priuiledged place, or market towne) commaunded or appointed to kéepe his or their house, for auoyding of further infection, and shal notwithstanding contrary to such commandement wilfully and contemptuously go abroad, and shall conuerse in company, hauing any infectious sore vpon him vncured, then such person and persons shalbe taken and adiudged a felon, and suffer death as in case of felony. But if such person shall not haue such sore found about him, then for his said offence to be punished as a vagabond should or ought to be by the statute made 39. El. 4. for the punishment of vagabonds, and further to be bound to his or their good behauiour for one yéere: but no attainder of felonie by vertue of this Act shal extend to any attainder or corruption of blod, or forfeiture of any goods, chattels, lands, tenements, or hereditaments. Stat. 1. Iac. 31

No corruption of blood, or forfeiture.

Abiuration by a Recusant.

9 By the stat. made Ann 35. El. it was ordained, That if any such offendor, which by the tenor and effect of the said Act (intituled an Act to retaine the Qu. subiects in due obedience) is to be abiured, shall refuse to make such abiuration, as by the said statute is appointed: Or after such abiuration shall not go to such hauen, and within such time as is appointed, & from thence depart forth of the realme, according to the said statute: or after his departure shall returne and come againe into any of the Queens realmes or dominions, without her special licence in that behalf first had and obtained: then in euery such case the person so offending shall be adiudged a felon, & suffer as in case of felony, without benefit of clergy. Prouided, that the wife of such offendor, by force of this act, shal not lose her dower: nor that any corruption of blod shal grow, or be by reason of any offence mentioned in this Act. But the heirs of such offendor by

Stat. 35. Eliz. 1 Stat. 3. Iac. 25

force

force of this Act, shall and may after the death of euery such offendor haue and enioy the lands, tenements, and hereditaments of such offendor, as if this Act had not beene made. Prouided, that no Popish Recusant or feme couert shall be bound to abiure by vertue of this Act.

Stat. 35 Eliz. 2

10 By a statute made Anno 35. El. it was enacted, That if any such offendor, which by the tenor and intent of the Act made to restraine Popish Recusants to some certaine place of abode, is to be abiured, shal refuse to make such abiuration, or after such abiuration made shal not go to such hauen, and within such time as is appointed, and from thence depart out of the Realme according to this Act: Or after such his departure shall returne or come againe into any of her Maiesties Realmes or Dominions, without her Maiesties speciall licence, in that behalfe first had and obtained: then in euery such case the person so offending shall be adiudged a felon, and shall suffer and lose as in case of felonie, without benefit of Clergy. Abiuration of a Recusant.

Stat. 25. H 8. 6
Stat. 5. Eli. 17

11 By a statute ordained Anno 25. H. 8. and made perpetuall Anno 5. El. it was enacted, That the detestable and abominable vice of Buggery committed with mankind, or beast, shal be adiudged felonie, and such order and forme of processe therein shalbe vsed against the offendors as in cases of felonie at the common law. And the offendors being thereof conuict by verdict, confession, or outlary, shall suffer such paines of death, and losses, and penalties of goods, cattels, debts, lands, tenements and hereditaments, as felons be accustomed to doe according to the order of the common law of this Realme. And no person offending in such offence, shalbe admitted to his clergy. And Iustices of peace shall haue authoritie within the limits of their iurisdiction and commission to heare and determine the same, as they haue in cases of other felonies. Buggerie. No clergie.

Sta. 21. H. 8. 7
Sta. 5. Eliz. 10

12 By a statute prouided Anñ 21. H. 8. and made perpetuall Anñ 5. El. it was established, That all and singular seruãts, to whom any caskets, iewels, money, goods, or cattels, by his or their master or mistresse, shall be deliuered to keep: if any such seruant or seruants withdraw him or them from their said master or mistresse, and goe away with the said caskets, iewels, money, or cattels, or any part thereof, to the intent to steale the same, and defraud his or their said master or mistresse thereof, contrary to the trust and confidence in him or them put by his or their master or mistresse: or else being in the seruice of his said master or mistresse, without assent or commaundement of his master or mistresse he imbesill the same caskets, iewels, money, goods, or cattels, or any part thereof, or otherwise conuert the same to his owne vse, with like purpose to steale it: if the said caskets, iewels, money, goods, or cattels that anie such seruant shall goe away with, or which hee shall imbesill with purpose to steale it, as is aforesaid, be of the value of fortie shillings, or aboue: Then the same false fraudulent and vntrue act shall be from henceforth deemed and adiudged felonie, and hee or they so offending shall be punished as other felons be punished for felonies committed by the course of the common Law. Prouided alwayes, that this Act, or anie thing therein contained, shall not in anie wise extend, or be preiudiciall to anie apprentice or apprentices, nor to any person being within the age of eighteene yeares, going away with his or their masters goods, or iewels, or otherwise conuerting the same to his or their owne vses, during the time of their apprentiship, or being within the said age of eighteene yeares, but that euerie apprentice or apprentices, such Seruants imbesilling their masters goods.

such person or persons being within the said age, doing or offending contrarie to this Act, shall be and stand in like case, as they and euery of them were before the making of this Act.

B Receiuing money vpon an obligation.

If a man do deliuer an obligation to his seruant to receiue twenty pounds, and the seruant doth receiue the money of the Obligor, and then goeth awaie with the same, or doth conuert it to his owne vse, this is not felony within the compasse of the foresaid statute of 21.H.8. for the master did not deliuer anie goods to his seruant in this case, but an Obligation, which is not valuable, but a thing in action: and moreouer, the money was not deliuered to the seruant by the hands of his master, but by the Obligor. But if one of a mans seruants doth deliuer to another of his seruants goods of the masters, being aboue the value of fortie shillings, and he doth go away with it, or conuert it to his owne vse, this is felonie. M.25.H.8 Dyer 5.

C Receiuing money for wares.

If a man doe deliuer to his apprentice wares or merchandises, to sell at a faire, or a market, and he selleth them, and receiueth the money, and then goeth away with the money, or conuerteth it to his owne vse, this is not felonie by the statute of 21.H.8. for he had not the money by the deliuerie of his master, neither went he away with the thing that was deliuered vnto him. M.25.H.8 Dyer 5.

Seruants imbesilling their masters goods after his death.

13 By the Statute of Anñ 31.H.6. it was ordained, That executors shall haue a writ out of the Chauncery, by the aduice of the Chauncellor, two chiefe Iustices, and the chiefe Baron of the Exchequer, with two proclamations, returnable in the Kings bench against such houshold seruants of the Testator, as haue spoiled or eloigned the goods of their master, after the death of the Testator. And if the writ be returned serued, and the defendants make default, they shall be attainted of felony: and if they appeare, they shall be committed to prison, there to remaine at the discretion of the Iustices, vntill the defendants doe answer vnto the said executors in such actions which the said executors will declare against them, or any of them, by bill or writ, for the riot, taking, and spoiling aforesaid, and that the same actions be determined, so that such actions be pursued with effect, and not slackly to retaine the same persons in prison. And if the same persons be enlarged out of prison by the said Iustices, then they shall find sufficient sureties to the executors by recognizance to keepe such daies as they shall haue alligned by the Court. And if the keeper of the prison, whereunto they shall be committed, doe let them goe at large, without order of the Iustices, then the said keeper shall forfeit fortie pounds to the executors. No protection shall lie in anie action vpon this statute. St.31.H.6.1

Enforcing a prisoner to become an approuer.

14 By the Statute of Anno 14.Ed.3. it was accorded, That Sheriffes shal haue the keeping of gaoles, as they had wont to haue, and put in such keepers for whom they will answer. And if any keeper of prison or vnder keeper shall by too great duresse of imprisonment and paine cause anie prisoner which he hath in his custodie, to become an approuer against his will, and is thereof attainted, he shall be adiudged a felon. St.14.E.3.10

Egyptians.

15 By the statute of Añ 5.El. it was enacted, That euery person & persons which shal be seene or found within this realm of England or Wales, in anie company of vagabonds, commonly called, or calling themselues Egyptians, or counterfeiting, transforming, or disguising themselues by their apparell, speech, St.5.Eliz.20

ſpéch, or other behauiour, like vnto ſuch vagabonds, commonly called, or calling themſelues Egyptians, and ſo ſhall or doe remaine and continue in the ſame by the ſpace of one moneth: then the ſame perſon or perſons ſhall be deemed and iudged a felon and felons, and ſhall ſuffer paines of death, loſſe of lands and goodes, as in caſes of felonie by the order of the common Lawes of this Realme, and ſhall vpon triall of them, or any of them, be tried in the countrey, and by the inhabitants of the countie, or place, where hee or they ſhall be apprehended, or taken, and not per medietatem linguæ, and ſhall loſe the priuiledge and benefit of Sanctuary and Cleargie. Prouided, That this Act ſhall not in anie wiſe extend to anie childe or children, being within the age of 14. yeares. Triall. No Cleargie. Foureténe yeares.

Stat. 8.H.6.12 16 By the ſtatute made Anno 8.H.6. it was ordained, That if any record, or parcell of the ſame, Writ, Returne, Pannell, Proces, Warrant of Attorney in the courts of Chauncery, Exchequer, the one Bench, or the other, or the Treaſury, be willingly ſtolne, taken away, withdrawne, or auoided by anie Clarke, or other perſon, by cauſe whereof any iudgement be reuerſed, ſuch ſtealer, taker away, withdrawer, or auoider, their procurors, counſellors, and abettors, being thereof indicted, and by proces thereupon made, thereof dulie conuict by their owne confeſſion, or by enqueſt to be taken of lawfull men (whereof the one halfe ſhall be of the men of anie court of the ſame courts, and the other halfe of other) ſhall be iudged for felons, and ſhall incurre the paine of felony. And the Iudges of the ſaid Courts, of the one Bench, or of the other, haue power to heare and determine ſuch defaults before them, and thereof to make due puniſhment, as is aforeſaid. Imbeſilling of Records.

2.R.3.10 Br. Cor. 173 If a Iudge do file an Indictment with other Indictments, which was not found by the Iury, that did find other Indictments: Or if he do imbeſil or raſe a Record, or ſuch like, this is but miſpriſion in the Iudge, but this is felonie in another perſon who is no Iudge: and the Iudge ſhall be indicted and arraigned thereof, and ſhall make a fine, and loſe his office for this miſpriſion. And if the Steward of a Libertie doth arraigne a man by the colour of Infangthiefe, and doth adiudge him to death, the Libertie ſhall be ſeiſed therefore: but no puniſhment ſhall be inflicted vpon the Steward, for he did it by colour of the Libertie, and ſo no felonie: and if a man doe ſue another by an Action of Debt to the exigent, whereupon hee is outlawed, and another man doth raſe the originall, and the third Capias, and the exigent, and maketh part in London, and the reſidue in Middleſex, and doth write in them W.B. for I.B. this is felonie by the foreſaid Statute of 8.H.6. which is, if a Record in either of the Benches, or in the Exchequer, be imbeſiled, carried away, withdrawne, or auoided, whereby a Iudgement ſhall be reuerſed, that then it ſhall be inquired by Clarks of thoſe Courts, and others, and it ſhall be adiudged by the Iuſtices of the ſame Court, and it ſhall be ordained as felonie: and this raſure doth auoid the whole Record, ſo that it cannot be rediſſed by errour, and it is a greater offence than if part onely had beene auoided: and all who do agreeing thereunto be felons. The penalties of Iudges or officers abuſing Records.

2.R.3.10

Stat. 5.H.4.5. 17 By a Statute made Anno 5.H.4. it was enacted, That the offendors which do cut the tongues, or put out the eies of any of the kings liege people, and that duely proued, and found that ſuch deede was done of malice preteneed, ſhall incurre the paine of felonie. Cutting of tongues, putting out of eies.

18 By

Multiplicatiõ

18 By the Statute made Anno 5.H.4. it was ordained, That none shal vse to multiply gold or siluer, nor practise the Art of Multiplication: and if anie doe, he shall incurre the paine of felony in this case. Sta.5.H.4.4.

withholding of a hawke.

19 By the Statute made Anno 34.Ed.3. and 37. Ed.3. it was enacted, That whosoeuer findeth a Falcon, Marcelet, Laner, Laneret, or other hawke, which the owner thereof hath lost, shall immediately bring the same to the Sherife of the Countie, which shall make Proclamation in all the good Townes of the Countie, that he hath such a Hawke in his custodie, and if the owner which lost the hawke, or anie of his seruants come to challenge it, and prooueth that it is his masters, he shall pay for the costs, and haue it. And if none doe come within foure moneths to challenge it, then the Sherife shall haue the hawke, agreeing with him that tooke it vp, if he be a simple man, and if he be a Gentleman, and of estate to haue a hawke, then the Sherife shall deliuer him the hawke, taking reasonable allowaunce for the keeping thereof. And whosoeuer taketh a hawke, and the same concealeth from the owner, or from his falconers, or taketh away a hawke from the owner, or stealeth a hawke and carrieth it away, not obseruing the foresaid ordinances, and is thereof attainted, shalbe vsed as a felon, which hath stolen a horse or other thing. St.34.Ed.3.22 St.37.Ed.3.19

Congregatiõs by masons.

20 By a Statute made Anno 3.H.6. it was ordained, That Congregations and Confederacies shall not be holden by Masons in their generall assemblies. And if any such be made, they that cause such Chapters, and Congregations to be assembled and holden, if they be thereof conuict, shall be adiudged for felons. And all other Masons that come to such Chapters and Congregations, shall be punished by imprisonment of their bodies, and make fine and ransome at the Kings will. Stat.3.H.6.1.

A Souldier departing frõ his captaine.

21 By the Statute of Anno 18.H.6. Anno 2.Ed.6.2. and Anno 4.& 5: P.& M. it was enacted, That if anie Souldier, man of Armes, or Archer, which hath taken parcell of his wages of his captaine, hath mustered, and is entred of record the Kings souldier, doth not passe the sea, or goe with his captaine, (except notorious sickenes or impediment by Gods visitation doth stay him, which he shall immediately certifie his captaine, and repay his money) or else being in the enemies Countrey in garrison, or elsewhere in the Kings seruice, where he is appointed to serue, doth depart without licence of the Kings lieutenant, deputy, high admirall, vice-admirall, warden, captaine, or in their absence, of their deputies, then he shall be taken, indged, and executed as a felon, without hauing any aduauntage of Cleargie or Sanctuarie. And Iustices of Peace shall haue authoritie to enquire thereof, and to heare and determine the same, as they doe other felonies committed in that Shire where such Souldior shall be taken. And by a Braunch of a Statute made Anno 5.Elizab. it was ordained, That the foresaid Statute of 18.H.6. in all paines, forfeitures, and other things, did, doth, and hereafter shall extend, as well to all and euery Mariner and Gunner, hauing taken, or which hereafter shall take prest or wages, to serue the king, his heires, or successors, to all intents and purposes, as the same doth to any Souldiour. S. the Statutes of 7.H.7.1.& 3. H.8.5. made to the like effect. Et Quære whether the first Statutes which were made for couenant Souldiours, or the later Statutes which were ordained for prested Souldiors, be, or ought to be put in execution: Sta.18.H.6.19 Sta.2.Ed.6.2. Stat.4.& 5. P.& M.3. Sta.5.Eliz.5 1.Iac.25. Sta.7.H.7.1 3.H.8.5. Co.lib.6.27.

A Mariner or Gunner.

on: wherein haue reſpect to the meaning of the makers of the foreſaid Statute of Anno 5. Eliz. 5.

St. 27. Eliz. 2. 22 By the Statute of Ann 27. El. 2. it was ordained, That euery perſon which ſhal wittingly and willingly, receiue, relieue, comfort, aid, or maintaine any Jeſuit, Seminary prieſt, or other prieſt, made out of the Realme of England, Deacon, or religious or Eccleſiaſticall perſon, being at liberty, or out of hold, knowing him to bee a Jeſuit, Seminary prieſt, or other ſuch prieſt, Deacon, or religious or Eccleſiaſticall perſon, ſhall for ſuch offence be adiudged a felon, without benefit of Clergy, and ſuffer death, loſe, and forfeit as one attainted of felony. Receiuing or relieuing of Jeſuits. No Clergy.

St. 28. E. 1. 2. 23 By the ſtatute made An. 28. Ed. 1. it was eſtabliſhed, That if any make purueyance or prizes without warrant, and do carry them away, againſt the will of the owner, he ſhalbe arreſted by the town where the prizes were made, and carried to the next Gaole, and if he be thereof attainted, he ſhal be puniſhed as a felon, if the value of the goods do ſo require. Purueyance without warrant.

St. 25. E. 3. 15 24 By the Statute of Anno 25. Edw. 3. it was ordained, That no Purueyor of the Kings ſhall take any more Sheepe before Sheare time, but ſo many as may reaſonably ſuffice vntill Sheare time, and after that time they ſhall take as many ſhorne Sheepe, and not other, as may reaſonably ſuffice for the time to come. And if any Maker, Purueyor, or Buyer, take any ſheepe with their Wooll betwixt Eaſter and the Feaſt of Saint John Baptiſt, praiſe them at a ſmall price, and ſend them to his houſe to bee ſhorne to his owne profite, and thereof be attainted at the ſuit of the king, or the party, he ſhalbe vſed as a Theefe or a Robber. Purueying of ſheepe.

St. 5. Ed. 3. 2. 10 E. 3. 1. 25 E. 3. 1. 36. Ed. 3. 2. 25 By the Statutes made Anno 5. Edw. 3. 10. Edw. 3. 25. Ed. 3. 36. Ed. 3. it was enacted, That the Corne, Cattel, & other victuall, & things which ſhalbe taken for the kings houſe, ſhalbe taken in ſuch place where moſt plenty is, and in conuenient time, and no more then is needfull for that ſeaſon. And if the purueyor or buyer cannot well agree with the ſeller for that which hee ſhall need, then the ſame ſhall be praiſed at the very value by the Conſtables and foure honeſt men of the Townes where ſuch takings is, thereunto ſworne: and the praiſers ſhall not be conſtrained by menace, threats, dureſſe, or other villanie, to ſet any price other then their oathes do require, but as ſuch things doe commonly goe in the next Markets. And Indentures or Tallies ſhall be preſently made betwixt the purueyors and thoſe from whom the goods bee taken, in the preſence of the ſaid Conſtables, and foure praiſers, containing the quantitie of their takings, the price, and of what perſons, and they ſhall bee ſealed with the purueyors ſeales, by which Indentures or Tallies ſatisfaction ſhalbe made to them, from whom ſuch goods be taken. And if any Taker or Purueyor doe make his prouiſion in other manner then by foure diſcreet men of the Towne, or doe not deliuer Tallies or Indentures with his ſeale, as is beforeſayd, hee ſhall bee incontinently arreſted by the Towne where ſuch purueyance was made, and brought to the next Gaole: and if hee bee thereof attainted, he ſhall be puniſhed as a felon, if the quantity of the goods doe require. Vnpaiement of things purueied.

Taking of carriage.

26 By the Statute of Añ 36.Ed.3. it was enacted, That if any Taker or Buyer, after Commiſſion to him directed, doth purvey, levie, or take any carriage in other manner then is compriſed in his Commiſſion, it is Felony. St.36.E.3.28

And by the Statute of Anno 36.Edw.3. it was ordained, That Commiſſions ſhall be awarded, to enquire of Purveyors behaviour: and if it bee found at the King, or parties ſuit, by evidence of the indictors, or other manner that the Purveyors have taken more then they have delivered to the kings houſe, and that they have not paid for that which they have taken, it is felony, & they ſhalbe puniſhed as felons. St.36.E.3.4.

Forging of evidence.

27 By the Statute of Anno 5.Eliz. it was ordained, That it ſhall bee Felony, without benefit of Clergie or Sanctuarie, eſtſoones to commit any of the offences prohibited by the ſaid Statute, ordained againſt the forging of Evidences and Writings, being once before convicted or condemned of any of the ſaid offences by any of the waies or meanes limitted by the ſaid Statute. But there ſhall bee no corruption of blod, or forfeiture of dower, by reaſon of this felony. S. Forgerie 3.&c. St.5.El.14.

A Rogue baniſhed.

28 By the Statute of Añ 39.El. it was enacted, That it ſhalbe felony for any Rogue, being by the Juſtices of Peace adiudged incorrigible & dangerous, and therefore baniſhed this Realme by the Juſtices, in their Quarter Seſſions, to returne againe into any part of this Realme, or Wales, without licence or warrant ſo to doe, which felony ſhall be heard and determined in that County of this Realme, or Wales, in which the offendor ſhalbe apprehended. St.39.El.4.

Rogues incorrigible.

And by the Statute made Anno 1.Iacob. ſuch Rogues as ſhall be adiudged (as aforeſaid) incorrigible or dangerous, ſhall alſo by the iudgement of the ſame Juſtices, or the more part of them then preſent, in their open Seſſions of the Peace, be branded in the left ſhoulder with an hot burning yron, of the breadth of an Engliſh ſhilling, with a great Romane R. vpon the yron, and the branding vpon the ſhoulder to bee ſo throughly burnt and ſet on vpon the ſkinne and fleſh, that the letter R. bee ſeene, and remaine for a perpetuall marke vpon ſuch Rogue, during his or her life, and thereupon bee ſent by the ſame Juſtices to the place of his dwelling, if he haue any: if not, then to the place where he laſt dwelt by the ſpace of a yeare, if that can be knowne by his confeſſion, or otherwiſe: and if that cannot be knowne, then to the place of his birth, there to be placed in labour, as a true ſubiect ought to bee: and after ſuch puniſhment of any ſuch Rogue, as aforeſaid, if any Rogue ſo puniſhed ſhall offend againe in begging or wandering, contrarie to the ſaid ſtat.of 39.El.4. or this preſent act, Then in euery ſuch caſe the party offending ſhalbe indged a felon, & ſhall ſuffer as in caſes of felony, without benefit of clergie, the ſame felony to be tried in the countie where any ſuch offendor ſhalbe taken. St.1.Iacob.7. Lex Alured Regis.

Coniuration, Witchcraft.

29 By the Statute of Anno 1.Iacob. 12. it was enacted, That if any perſon or perſons ſhall vſe, practiſe, or exerciſe any invocation or coniuration of any euill and wicked ſpirit, or ſhall conſult, couenant with, entertaine, employ, feed, or reward any euill or wicked ſpirit, to or for any intent or purpoſe, or take vp any dead man, woman, or child, out of his, her, or their graue, or any other place, where the dead body reſteth, or the ſkinne, bone, or any St.1.Iac.12.

other

other part of any dead perſon, to bée employed or vſed in any maner of Witchcraft Sorcerie, Charme, or Enchantment, or ſhall vſe, practiſe, or exercile any Witchcraft, Enchantment, Charme, or Sorcery, whereby any perſon ſhalbe killed, deſtroyed, waſted, conſumed, pyned, or lamed, in his or her body, or any part thereof: then euery ſuch offendor, or offendors, their aydors, abettors, and counſellors being of any the ſayd offences duely and lawfully conuicted and attainted, ſhall ſuffer paines of death as a felon or felons, and ſhall loſe the priuiledge and benefit of Clergy and Sanctuarie. If any perſon or perſons ſhall take vpon him, or them by Witchcraft, Inchantment, Charme, or Sorcerie, to tell, or declare in what place any treaſure of Gold or Siluer, ſhould, or might be found, or had in the earth, or other ſecret places: Or where gods, or things loſt or ſtollen ſhould be found, or become: Or to the intent to prouoke any perſon to vnlawfull loue: Or whereby any cattell, or gods of any perſon ſhall be deſtroyed, waſted, or impaired, or to hurt or deſtroy any perſon in his or her body, although the ſame be not effected and done: Then all and euery ſuch perſon and perſons ſo offending, and being thereof lawfully conuicted, ſhall for the ſaid offence ſuffer impriſonment by the ſpace of one whole yeare, without baile or mainprile, and once in euery quarter of the ſaid yeare ſhall in ſome market towne, vpon the market day, or at ſuch time as any Faire ſhalbe kept, there ſtand openly vpon the Pillorie, by the ſpace of fiue houres, and there ſhall openly confeſſe, his, or her error or offence. If any perſon or perſons being once conuicted of the ſame offences, as is aforeſaid, do eftſoones perpetrate and commit the like offence, then euery ſuch offendor being any of the ſayde offences the ſecond time lawfully and duly conuicted and attainted, as is aforeſayd, ſhall ſuffer paines of death, as a felon or felons, and ſhall loſe the benefit and priuiledge of Clergie and Sanctuarie: ſauing to the wife of ſuch perſon as ſhall offend in any thing contrary to this Act, her title of Dower, and alſo to the heire and ſucceſſor of euery ſuch perſon, his and their title of inheritance, ſucceſſion, and other rights, as though no ſuch attainder of the aunceſtor or predeceſſor had béene made. Prouided alwaies, That if the offendor in any the caſes aforeſaid ſhal happen to be a Péere of the realme, then his triall therein to be had by his Péeres, as it is vſed in caſes of Felony or Treaſon, and not otherwiſe.

Lex Athelſtani 6.

Finding of treaſure.

Declaring where gods loſt ſhould bée found.

Prouoking to loue.

Deſtroying of any perſon or cattell.

St. 1. H. 7. 7. 30 By a Statute made Anno 1. H. 7. it was ordained, That at euery ſuch time as any information ſhall be made of any vnlawfull hunting by night, or with painted faces, in Forreſt, Parke, or Warren, to any of the Kings Counſell, or to any Iuſtice of Peace of the Countie where ſuch hunting ſhall bée, of any perſon ſuſpected thereof, It ſhall bée lawfull to any of the ſame Counſell, or Iuſtice of Peace, to whom ſuch information ſhall bée made, to make a Warrant to the Shirife, or to any Conſtable, Bailife, or other Officer of the ſame County, to arreſt and take the ſame perſon, to haue him before the maker of the ſame Warrant, or any other of the Kings councell, or Iuſtice of Peace of the ſame Countie. And the Counſellor or Iuſtice before whom ſuch perſon ſhall bée brought, ſhall haue power to examine him of the ſayd hunting, and of the doers thereof: and if he conceale the offence, or any offendor, it is felony: and if hée confeſſe the truth, and all that hée ſhall bée examined of and knoweth in that behalfe, then the offence of hunting by him done, ſhall be againſt the King but treſpaſſe finable, to be aſſeſſed at the next generall Seſſions by the Iuſtices there. And if any Reſcous or diſobedience bée made to any perſon hauing authority to doe execution or iuſtice

Hunting with Wilors.

Reſcous.

tice by any such warrant, by any person which should be arrested, so that execution of the same warrant be not had, then the same rescous and disobedience shalbe felony: and the same felony shall be enquired of, and determined as other felonies beene.

Twelue or aboue assembled together to change any Law.

31 By a Statute made Anno 1. M. & 1. Eliz. it was ordained, That if any persons, to the number of twelue, or aboue, being assembled together, shall intend, goe about, practise, or put in vre, with force of armes, vnlawfully and of their owne authority to alter or change any Lawes, made or established for Religion, by authoritie of Parliament, which stand in force; or any other Lawes or Statutes of this Realme, or any of them: the same number being commaunded or required by the Shirife of the Shire, or by any Iustice of Peace of the same Shire, or by the Mayor, Shirife, Iustices of Peace, or Baylifes of any Citie, Borough, or Towne Corporate, where any such assemblies shall be vnlawfully had or made, by proclamation in the Queenes name, to retire & repaire to their owne houses and habitations, or places from whence they came: And they or any of them notwithstanding such proclamation, shall remaine and make their abode, or continue together by the space of one whole houre, after such commaundement or request made by proclamation, or after that shall willingly in forcible and riotous manner, attempt to doe, or put in vre any things aboue specified, then as well euery such abode or continuing together, as euerie such act or offence, that after such commaundement or request by proclamation had or made, shall bee attempted to bee done, practised, or put in vre by any persons being of the number aforesaid, shall be adiudged Felonie in all and singular those persons, that so shall make their abode and continue together, or shall attempt or commit any such act. And the offendors therein shall be adiudged Felons, and shall suffer only execution of death as in case of Felony.

St. 1. M. 12. St. 1. El. 16.

Practising to destroy parks, ponds, conduits.

If any persons to the sayd number of twelue or aboue, shall intend, goe about, practise, or put in vre, in manner and forme aforesaide, to ouerthrow, cut, breake, cast downe, or digge vp the pales, hedges, ditches, or other inclosure of any Parkes or Parke, or other ground inclosed, or the bankes of any Fish Pond, or Pole, or any Conduits for water, Conduit heads, or Conduit pipes hauing course for water, to the intent that the same, or any of them from henceforth should remaine open, not inclosed, or voyd: Or vnlawfully to haue common or way in the sayd Parkes or Parke, or other grounds or ground inclosed, or in any of them, or to destroy in manner and forme aforesayd, the Deere in any Parkes or Parke, or any Warreins or Warrein of Conies, or any Doue-houses, or any Fish in any Fish ponds, or Pole, or to pull, or cut downe any Houses, Barnes, Mills, or Bayes, or to burne any stackes of corne or graine, or to abate or diminish the Rents, or yearely value of any Mannors, Lands, or Tenements, or the price of anie victualles, corne, or graine, or anie other thing vsuall for the sustenaunce of men, and being required and commaunded by anie Iustice of Peace, or by the Sherife of the Countie, or by the Maior, Bailife, or Bailifes or other head Officers of anie Citie, or Towne Corporate, where such assemblie shall be had, by Proclamation to be made in the Queenes name, to retire or returne in peaceable manner to their places and houses from whence they came, and they or any of them (notwithstanding such Proclamation) shall remaine, or make their abode, or continue together by the space of one whole houre, after

ter ſuch commaundement or requeſt made by Proclamation: or after ſhall in that forcible manner doe, or put in vre any of theſe things laſt before mentioned, then as well euerie ſuch abode, or continuing together, as euery ſuch act, that after ſuch commaundement or requeſt by Proclamation had or made, ſhall bee done, practiſed, or put in vre, by any perſons, being aboue the number of twelue, ſhall bee adiudged Felonie, and the offendors therein ſhall bee adiudged Felons, and ſhall ſuffer onely execution of death, as in caſe of Felonie.

Raiſing of vnlawfull aſſemblies by ſome act or words.

If any perſon or perſons, vnlawfully, and without authoritie, by ringing of any Bell or Bells, ſounding of any Trumpet, Drumme, Horne, or other inſtrument whatſoeuer, or by firing of any Beacon, or by malicious ſpeaking or vttering of any words, or making of any outcrye, or by ſetting vp, or caſting of any bills or bill, or writing whatſoeuer, or by any other deed or act, ſhall raiſe, or cauſe to bee rayſed, or aſſembled, any perſons to the number of twelue, or aboue, to the intent that the ſame perſons ſhould doe or put in vre any of the acts or things aboueſayd, and that the perſons to the number of twelue, or aboue, ſo rayſed and aſſembled, after requeſt or commaundement had or giuen, in forme aforeſayde, ſhall make their abode, or continue together, as is aforeſayde, or vnlawfully, and in forcible manner perpetrate, doe, commit, or put in vre any of the acts or things aboueſayde, then all and ſingular perſons, by whoſe ſpeaking, deed, act, or any other the meanes aboue ſpecified, any perſons to the number of twelue ſhall bee rayſed or aſſembled, for the doing, committing, or putting in vre any of the acts or things aboue mentioned, ſhall bee adiudged for his ſo ſpeaking or doing, a Felon, and ſhall ſuffer execution of death as in caſe of Felonie. If any wife, or ſeruant of any of the ſame perſons, or any other perſon whatſoeuer, ſhall willingly and without compulſion, bring, ſend, deliuer, or conuey, any Money, Harneyes, Artillerie, Weapons, Meat, Bread, Drinke, or other Victuall to any perſon or perſons ſo being aſſembled, as is aforeſayde, during ſuch time as hee or they ſhall bee ſo aſſembled together in forcible manner, as is aforeſayde, then euerie wife, ſeruant, or other perſon ſo bringing or conueying &c. any of the foreſayd things, to the ſame perſons ſo being aſſembled together in forcible manner, or to any of them, and not departing to their houſes or dwelling places, vpon requeſt or commandement made vnto them, as is aforeſaid, ſhalbe adiudged a felon, and ſhall ſuffer execution of death as in caſe of felonie.

Releeuing them which be aſſembled.

Vnlawfull aſſembly by xl. or more.

If any perſons to the number of fortie, or more, ſhall aſſemble together in forcible manner vnlawfully, and of their owne authoritie, to the intent to execute, doe, or put in vre any of the things aboue ſpecified, or to doe other felonious or rebellious act or acts, and ſo ſhall continue together by the ſpace of three houres, after Proclamation ſhall bee made, at, or nigh the place where they ſhall bee ſo aſſembled, or in ſome Market Towne, thereunto next adioyning, and after notice thereof to them giuen, then euerie perſon ſo willingly aſſembled in forcible maner, and ſo continuing together by the ſpace of three houres after ſuch Proclamation made, and notice thereof giuen ſhall be adiudged a felon. S. Riots &c. 32. &c.

Wandring ſouldiers and mariners.

8. 39. El. 17. 32 By the Statute made Anno 39. Eliz. it was enacted, That all idle and wandring Souldiers, or Mariners, or idle perſons, which now are, or hereafter

ter shall bée wandring as Souldiers or Mariners shall settle themselues in some seruice, labour, or other lawfull course of life, without wandring, or otherwise repaire to the places where they were borne, or to their dwelling places, if they haue any, and there remaine, betaking themselues to some lawfull trade or course of life, vpon payne that all persons offending contrarie to this Act, to bée reputed as Felons, and to suffer as in case of Felonie, without any benefit of Clergie to bée allowed. And euery idle and wandring Souldier or Mariner, which comming from his Captains from the Seas, or from beyond the Seas, shall not haue a Testimoniall vnder the hand of some one Iustice of Peace, of, or néere the place where he landed, setting downe therein the place and time where and when hée landed, and the place of his dwelling, or birth, vnto which he is to passe, as aforesaid, and a conuenient time therein limited for his passage: or hauing such Testimoniall, shal wilfully exceed the time therein limited aboue fourteéne dayes: And also as well euerie such idle and wandring Souldier or Mariner, as euerie other idle person wandring as a Souldier or Mariner, which shall at any time hereafter forge or counterfeit any such Testimoniall, or haue with him or them any such Testimoniall forged or counterfeited, as aforesayd, knowing the same to bée counterfeited or forged, in all these cases euerie such act or acts to bée Felonie, and the offendors to suffer, as aforesaid, without any benefit of Clergie. It shall and may bée lawfull for the Iustices of Assises, Iustices of Gaole deliuerie, and Iustices of Peace of euerie Countie, and for all Iustices of Peace in Townes Corporat, hauing authoritie to heare and determine Felonies, to heare and determine all such offences in their generall Sessions, and to execute the offendors, which shall bée conuicted before them, as in cases of Felonie is accustomed: Except some honest person, valued at the last Subsidie next before that time, to tenne pounds in goods, or fortie shillings in landes, or else some honest Freeholder, as by the sayd Iustices shall bée allowed, will bée contented before such Iustices as such person shall be arraigned of Felonie, to take him or them into his seruice, for one whole yeare then next following, and before the sayd Iustices will bée bound in Recognisaunce of tenne pounds, to bée leuied of his Lands, goods, Tenements, and Cattels, to the vse of the King, if hée kéepe not the said person or persons for one whole yeare, and bring him to the next Sessions for the peace, and Gaole deliuerie next ensuing after the sayd yeare. And if any such person retained depart within the yeare, without the licence of him that so retained him, then to be indicted, tried, and iudged as a felon, and not to haue the benefit of his Clergie.

Forging a Testimoniall.

Retaining an Offendor into seruice.

Departing without licence.

33 By a Statute made Anno 31. Elizab. it was established, That if any person or persons, hauing at any time hereafter the charge or custody of any Armour, Ordnance, Munition, Shot, Powder, or Habiliments of Warre of the Quéenes, her heires or successors, or of any Victuals prouided for the victualling of any Souldiers, Gunners, Mariners, or Pioners, shall for any lucre or gaine, or wittingly, aduisedly, and of purpose to hinder or impeach her Maiesties seruice, imbecile, purloyne, or conuey away any the same Armour, Ordnance, Munition, Shot, or Powder, Habiliments of Warre, or Victuals, to the value of twentie shillings, at one or seuerall times, then euerie such offence shall be adiudged Felonie, and the offendor and offendors therein to bée tried, proceéded on, and suffer as in case of Felonie. But none shall bée impeached for any offence against this Stat. vnlesse the same impeachment bée

Imbecilling the kings Armor &c. 31. El. c. 4.

The suit within a yere after the offence.

be prosecuted, or begun, within a yeare next after the offence done. And this Act, nor any attainder or attainders of any person or persons, for any offence made felonie by this Act, shal in any wise extend, or be interpreted to make the offendor or offendors to forfeit any lands, tenements, or hereditaments, any longer than during his or their life or lines, or to make any corruption of blod of any the heire or heires of any such offendor or offendors, or to make the wife of any such offendor to lose or forfeit her dower, or title of dower, of, or in any lands, tenements, or hereditaments, or her action, or interest to the same: any thing in this Act &c. notwithstanding. And such person or persons as shall bee impeached for any offence made felonie by this Statute, shall by vertue of this Act bee received and admitted to make any lawfull proofe that he can, by lawfull witnesse, or otherwise, for his discharge and defence in that behalfe: any Law, &c. notwithstanding.

No corruption of blod, or forf. of dower.

Proofe in discharge of the offendor.

St. 22. H. 8.

34 By a Statute made Anno 22. H. 8. and revived Anno 2. & 3. Ph. & M. it was ordained, That every perverse and malicious cutting downe, and breaking up, of any part or parts of the dike, called Powdike in Marchland in the Countie of Norffolke, and the broken dike, otherwise called Oldfield dike by Marchland, in the isle of Ely, in the Counties of Cambridge, or of any other banke being parcell of the Minde, & uttermost part of the causey of Marchland aforesaid, made for the defence and salvation of the sayde countrey of Marchland, at every time and times from henceforth committed and done (otherwise than in working of the sayd bankes or dykes, for the fortifying, repayring, and amending of the same) shall bee taken, reputed, and adiudged Felonie: And the offendors and doers of the same, and every of them, shall bee adiudged and reputed felons. And the Justices of Peace of the sayd Counties of Norffolke and Cambridge, within the sayd isle, at every of their Sessions within the same isle and Counties to be kept, shall have power to cause inquirie to bee made of every such offence, so at any time in forme aforesayd hereafter to bee done and committed, and to award like Proces against every of the sayd offendors, with like iudgement and execution of the same (if they or any of them bee found guiltie by verdict, or otherwise) as the said Justices have vsed to do vpon other felonies, being felonie by the common Law.

Cutting downe of Powdike.

St. 3. Iac. 4.

35 By a Statute made Anno 3. Iac. 4. it was enacted, That every Subiect of this Realme, that after the tenth day of June next comming, shall goe or passe out of this Realme to serve any forreine Prince, State, or Potentate, or shall after the sayd tenth day of June passe over the Seas, and there shall voluntarily serve any such forreine Prince, State, or Potentate, not having before his or their going or passing, taken the othe (viz. That our Soveraigne Lord King Iames is lawfull and rightfull King of this Realme &c.) before the officer thereunto appointed, shalbe a felon. And if any Gentleman, or person of high degree, or any person or persons which hath borne, or shall beare any office or place of Captaine, Lieutenant, or any other place, charge, or office, in Campe, Armie, or Companie of Souldiers, or Conductor of Souldiers, shall after goe or passe voluntarily out of this Realme, to serve any such forrein Prince, State, or Potentat, before that he and they shal become bound with two such sufficient sureties as shall bee allowed of by the officers, by this Act limited to take the said bond, vnto the K. his heires or successors, in the summe of xx. l. of currant English money at the least, with condition to the effect

Taking the othe for the Kings title.

Bound not to be reconciled, nor to make conspiracie,

effect following, he shall be a felon, viz. That if the within bounden &c. shal not at any time then after be reconciled to the pope or sea of Rome, nor shall enter into or consent vnto any practise, plot, or conspiracie whatsoeuer, against the K. Maiestie, his heires and successors, or any of his or their estate and estates, realms & dominions, but shall within conuenient time after knowledge thereof had, reueale & disclose to the K. Maiestie, his heires and successors, or some of the Lords of his or their priuie Counsell, all such practises, plots, and conspiracies, then the said Obligation to be void.

Forcible carrying any person out of Cumberland, &c.

36 By the stat. made Anno 43. El. it was ordained, That whosoeuer shall at any time hereafter, without lawful authoritie, take away any of the K. subiects, against his or their will, or wils, and cartie them out of the counties of Cumberland, Northumberland, Westmerland, and the Bishoprieke of Durham, or to any other place within any of the said Counties, or detaine, force, or imprison him, or them, as prisoners, or against his or their wills, to ransome them, or to make a prey or spoyle of his or their person or goods, vpon deadly feud, or otherwise: Or whosoeuer shalbe priuie, consenting, aiding, or assisting to any such taking, detaining, or carrying away of any such person or persons, as aforesaid: Or whosoeuer shall take, receiue, or carrie, to the vse of himselfe, or wittingly to the vse of any other, any money, corne, cattell, or other consideration, commonly called Blacke mayle, for the protecting or defending of him or them, or his or their lands, tenements, goods, or chattels, from such thefts, spoyles, and robberies, as is aforesaid: Or whosoeuer shall giue any such money, corne, cattel, or other consideration called Blacke mayle, for such protection as is aforesaid: Or shall wilfully and of malice burne or cause to be burned, or aid, procure, or consent to the burning of any barne or stacke of corne or grain, within any of the said Counties, or places aforesaid, & shalbe of the said seuerall offences, or any of them, indicted, and lawfully conuicted, or shall stand mute, or shall challenge peremptorily aboue the number of xx. before the Iust. of Assises, J. of Gaole deliuerie, J. of Oier and Terminer, or J. of peace within any of the sayd counties, at some of their generall Sessions, within some of the said counties to be holden, shalbe adiudged, reputed, and taken to be as felons, and shall suffer death, without any benefit of Clergie, Sanctuarie, or Abiuration, and shall forfeit as in case of felonie. St. 43. El 13.

Breaking of prison.

37 By the stat. of An. 1. E. 2. it was ordained in this maner, viz. Touching prisoners breaking of prison, the K. doth wil and commaund, that none which from henceforth doth breake prison, shall haue iudgement of life and member for the breaking of prison onely, except the cause for which hee was taken and imprisoned, do require such iudgement, if he should haue been conuicted thereof according to the law and custom of the Realm, though in times past it hath beene otherwise vsed. St. 1. Ed. 2.

Prin-

Principall and Accessorie.

HAuing treated sufficiently of Treasons, Homicides, and other Felonies, and shewed how many of euery of them there be, I am now to write of those that be culpable therin, and to declare which be the chiefe and most grieuous offendors in those crimes; whom the Law doth terme and adiudge Principals, and which be but Abettors, Procurers, and Receiuers; whom the Law doth brand and marke with the name of Accessories: & which of those be Accessories before the offence committed, and which after: in what cases one of them shalbe arrested, imprisoned, appealed, indicted, arraigned, or attainted, before the other, and in what not: when the acquitall of the one shal discharge the other, and when not: and where the punishment of the one shalbe greater than of the other, and where not. And in this title, to begin with the greatest and highest offence, The Law doth hold it a rule infallible, that in High Treason there is no Accessaries, for all the aduisers, councellors, persuaders, and assistants therein, be Principals, as much as if they were actors or doers: so that whatsoeuer offence doth make a man Accessarie in Felony, the like maketh him Principall in High Treason. But in Petit Treason there is oftentimes a Principall and an Accessary, there is in Homicide, Robbery, and other Felonies.

3.H.7.10. No Accessary in high treason.

2 There be two sorts of Accessaries in Felonie, whereof the one is Accessarie before the felonie committed, and the other is Accessarie after the offence done: As if one hire, procure, or commaund another to commit a Felonie, but is not present when the other doth it, this procurer or commaunder is Accessarie before the offence committed: But otherwise it is, if hee bee present at the time of the felonie committed, for in that case he is Principal. And in some case one may be appealed as Principall and Accessarie in one Appeale.

Accessarie before the offence committed.

18.Ed.4.14.
4.H.7.18.
7.H.4.27.

3 If one bee present at the death of a man, and moueth another to strike and kill him, by this meanes hee is principall, though hee did strike no stroke, as well as hee that killed him: For the blowes of him that did strike him, bee in construction of Law the blowes of him which commaunded him, when hee was present, for if the commaunder had sayd nothing, the man slaine had not beene killed.

Procurement of felonie.

4H.7.18.
13.H.7.10.
Plo com.100.

4 If

Coming purposely to a manslaugheer.

4 If one bee present at the killing of a man, and commeth thither for that cause, although he at that time doth not move another to strike or kill him, neither doth any thing, yet hee shall bee adiudged principall: For when diuers doe come to doe an euill act, and one alone doth it, and the others bee present abetting him, or readie to aid him in the fact, they bee principals to all intents, as fully as hee who did the act: for the presence of the other is a terrour to him that was assaulted, and the occasion that he durst not defend himselfe; for when one doth see his enemie and diuers of his companions comming to assault him, and they all doe draw their swords, and doe environ him, and one only doth strike him, in that he doeth thereof, the others shall be adiudged as great offendors as he who did strike him; for if the others had not bin present, peraduenture he would haue defended himself, and haue escaped: for the number of the others that were present, and also ready to strike him, was a great feare vnto him, and an abatement of his courage, & a cause to make him despaire of his defence, and so the occasion of his death. And though but one man gaue the blow, which was the cause of his death, yet the Lawe will adiudge it the stroke of them al, giuen by the hands of that one man, and to be in each degree as penall to them all, as if they all had holden their hands at one time vpon that sword, or staffe, and giuen him his deadly wound. 21. Edw. 4. 37. Bro. Cor. 171. Kel. fol. 161. Plo. Com. 98. 13. H. 7. 10.

A will to assist a felon.

5 If one being present at the killing of a man doth nothing, but would haue aided his companion, if the partie that was slaine had made any resistance, hee shall thereby bee adiudged principall: For all those which come in companie in any place where any assembly is gathered, that an euill fact is committed, bee it Homicide, Robberie, or other Trespasse, euery of them shall bee adiudged a principall actor, though they stand by, and doe no hurt: As if one come with others to doe a disseisin, and a man is killed by another, and hee therein did nothing, notwithstanding hee shall bee adiudged principall, though hee came not to any such purpose, because hee came to doe an vnlawfull act. Fi. Cor. 309. Fi. Cor. 314. 350. 433. 11. H. 4. 13. Fi. Cor. 314. 350.

In company, but not consenting to a felony.

6 If one chaunce to bee present when another is slayne, or when any other felonie is committed, and doth not come in companie with the felons, neither is of their confederacie, although hee doth not make any resistance, or disturbe the felon, or leuie Huy and Crye, yet he is neither principall nor accessorie: for it is no felonie in him but finable as a Trespasse. And some do hold, that hee shalbe but amerced in that case; and if he be within age, hee shall haue no punishment. Fi. Cor. 395. 14. H. 7. 31.

Holding a man vntil he bee slaine.

7 If one man doe hold another in his armes, or doe bind him, vntill a third man hath killed him, ý he did hold the partie slaine in his armes is principall: But that holding in his armes must be proued to be done of a wicked and felonious intent: for sometimes a man holdeth his friend in his armes of a louing mind, to keepe him from taking or doing of hurt, and vpon no malicious or euill intent. 25. Ed. 4. 44. 13. H. 7. 10. Bracton.

One thing commanded, & another effected.

8 If one commaund another to lay hold vpon a third man, and the party commaunded goeth and robbeth him, if the commaunder bee absent when this Robberie is done, this is not Felony in him: for the party to whom the commaundement was giuen, exceedeth his commaundement; and also the commaundement might haue beene performed without the Robberie.

Pl.Cor.314. berie. But otherwiſe it is, if the commaundement were to beat him, and the party commaunded did kill him in the commaunders abſence, in this caſe he is acceſſory to the felony, for it is hard to beat a man ſo, that he ſhall be ſure that he ſhall not die of that beating.

Plo com 475. 9 If A. doe commaund B. to robbe C. and hée attempteth to robbe him, and D. doth defend C. and fighteth with B. that aſſaileth him, and B. doth kill D. in this caſe A. ſhall bee acceſſorie to this murder, for that B. attempting to robbe C. doth purſue the commaundement of A. and ſo being in the purſuit of that commaundement, and reſiſted, another thing doth chaunce, viz. the death of D. therefore A. ſhall bée partaker of that fact, and of the puniſhment thereof, for that his commaundement was the cauſe thereof. And the ſame Law is, if A. doe commaund to beat C. and hée doth beat him ſo, that hée dyeth thereof, A. ſhall bée acceſſorie to this murder: For his commaundement was the foundation of this murder, and the murder is the ſequele of the commaundement, and if A. be preſent at this beating, then he ſhall be adiudged principall. And ſo it is, if A. doe commaund B. feloniouſly to burne the houſe of C. in the night, and he doth it, and the ſame fire doth alſo burne the houſe of D. neighbour to C. in this caſe A. ſhall be acceſſorie as well to the burning of the houſe of D. as of C. for ſéeing the burning of the houſe of D. doth enſue vpon the burning of the houſe of C. and the firſt houſe was burned by the commaundement of A. whereunto A. was acceſſorie, hée muſt alſo be acceſſorie to the burning of the ſecond houſe, viz. of the houſe of D. for he that commaundeth an euill and vnlawfull act to bée done, ſhall bée adiudged acceſſorie to all that ſhall enſue vpon the ſame euill act, but not to any other diſtinct thing. But it is otherwiſe, where A. doth commaund B. to burne the houſe of C. whom hée knoweth, and hée doth burne the houſe of D. or doth commaund him to ſteale a Horſe, and hée ſtealeth an Oxe: or doth commaund him to ſteale a white Horſe, and hée ſtealeth a blacke Horſe: or doth commaund him to robbe another by the high way of his money, and he doth rob him in his houſe of his plate; this doth differ from the commaundement of A. and therefore theſe acts cannot bée drawne within the compaſſe of his commaundements, and ſo hée ſhall bée adiudged no Acceſſorie to any of the foreſayd offences; for theſe bée other acts and other felonies, and not any of thoſe which A. did commaund or counſell to bée done. And yet if B. ſhall commit the ſame felonie which A. doth commaund or counſell to bée done, though he doth it at another day, at another time, with another inſtrument, or in another ſort than A. doth commaund or counſell him to doe it, A. ſhall bée acceſſorie thereunto: As, if A. doe counſell B. to kill C. by poyſoning of him, and hée doth kill him with his dagger: or doth counſell him to kill C. by the high way, and he killeth him in his houſe: or doth counſell him to kill him vpon one day, and he killeth him vpon another day; in all theſe caſes and the like A. ſhall bée acceſſorie to the murder: for the murder is the ſubſtance and principall matter that doth enſue vpon the commandement or counſell of A. which the law doth wholly reſpect, and not the circumſtances, being onely the maner and forme of the facts.

Counſelling to rob one, and another is killed.

Commanding to beat one, & he is killed.

Commaundement of burning one houſe and another is burned.

Counſell of one act, and another is done

The felonie commanded, committed in another manner.

Plo.com.476 10 If A. do command or counſell B. to kill C. and before he hath killed him A. doth repent him, and commeth vnto B. and telleth him, that hée is ſorie for his wicked counſell, and perſuadeth and chargeth B. that hée ſhall not kill C. and

The felonie commanded countermaunded.

and yet after that B. doth kill C. in this case A. shall not be adiudged accessorie to the death of C. but it is the onely murder and act of B. because A. did countermaund his first councell: And the Law doth adiudge no man accessorie to a Felonie before the Felonie committed, but him only whose mind & meaning is, that the Felonie should be committed at that time that it is done.

Counselling to poison one and another is poisoned.

11 If A. doe procure and counsell B. to poyson C. and to that end doth buy some venim or poyson, and deliuereth it to B. who tempereth it in an apple, or other thing, and deliuereth it to C. with intent to poison him. and C. not knowing the poyson in the apple, nor the intention of the sayd B. doth giue the sayd apple to C. to eat, who eateth it, and is poysoned therby, and dyeth of the same poyson within few dayes after: In this case notwithstanding this be willful murder in B. that deliuered the poysoned apple to C. (though it poysoned not him who he meant to haue poysoned, but C. a straunger, to whom he pretended no hurt) yet A. who procured and counselled B. to giue this poyson to C. is not accessorie to the murder of C. for that he neuer persuaded, nor gaue his counsell, that C. should be poisoned, which assent of his the Law will neuer straine further than he gaue it. Pl. Com. 475.

Commanding or aiding to Rape or Robberie.

12 As commaundement and ayde is in Murder, and Homicide, so is it in euery other Felony, as Rape, Robberie, &c. for in Rape, if one do not commit the act, but aideth and assisteth his companion, he is principall as well as he that committeth the fact. And the same law is, if one doe commit a Robberie, and others be in his company, and do come with him for that purpose, they be all principals. Fi. Cor. 314. 350.

Accessorie after the offence committed.

13 Accessorie after the offence is he, who knowing that another hath committed a felonie, doth receiue him, ayd him, or comfort him: As if one do receiue a felon (before he is attainted of felonie) knowing of the felonie which he hath committed, or doth fauour him, or ayd him with money, meat, drinke or lodging, by that meanes he shalbe adiudged accessorie. But this difference is to be taken of aid, or counsell: for if he aid him by his good word, or suit for his deliuerance, or do send a letter for his enlargement, this doth not make him accessorie to the felonie. 26. Ass. p. 47.

What act of the accessorie maketh him a felon, what not.

Receit of a felon attainted in the same Countie.

14 If one receiue a felon that is attainted of Felonie by verdict or confession in the same Countie where the receiuer is commorant or dwelling, and doth ayd him, he is accessorie to the Felonie, though he doth not know that the other hath committed Felonie, because he is a Felon by matter of record, whereof euery straunger dwelling or commorant in the same Countie is to take notice. And it is Felonie, if one be indicted of the receit of another that is Outlawed of Felonie in the same Countie where the receiuer dwelleth: for that the offendor is attainted of Felonie in that Countie by matter of record. S. Indictments 34. Fi. Cor. 377 Bracton.

Receit of a felon attainted in another Countie.

15 If one be attainted of Felonie by verdict, confession, or outlawry in one Countie, and another doth receiue him, and aid him in another Countie, he is not accessorie to the Felonie, vnlesse he doth know of the Felonie: because he cannot take knowledge of an act done in another County, though it be by matter of record. S. Indictments. 34. Fi. Cor. 377.

16 Because

16 Because that Theeues and Robbers that had robbed or stollen in one Countie, would conuey their spoile, or part thereof so robbed and stollen, vnto some of their adherents in another Countie, where the principall offence was not committed; who knowing of such felonie, willingly and by couin did receiue the same: in which case, though the principall felon were attainted in one Countie, the accessorie escaped, by reason that he was accessorie in another Countie, and that the Iurors of the same Countie by the common Law could take no knowledge of the principall felony ne attainder in the first Countie, and so such accessories escaped thereof vnpunished: For the remedie whereof, by a Statute made Anno 2. & 3. Ed. 6. it was ordained, That where anie murder or felonie shall be committed in one Countie, and another person or moe shall be accessorie to the same in another Countie, Then an Indictment found or taken against such accessorie and accessories, vpon the circumstance of such matter (before the Iustices of Peace, or other Iustices or commissioners, to enquire of felonies in the Countie, where such offences of accessorie shalbe committed) shalbe as good in the law, as if the said principall offence had been committed within the same County where the same Indictment against such accessorie shall be found. And the Iustices of Gaole deliuerie, or Oyer and Terminer, or two of them, of, or in such Countie, where the offence of anie such accessorie shall be committed or done (vpon suite to them made) shall write to the Custos Rotulorum, or Keepers of the Records, where such principall shall be attainted or conuict, to certifie them, whether such principall be attainted or conuicted, or otherwise discharged of such principall felonie, who vpon such writing shall make sufficient certificat in writing vnder their seale or seales to the said Iustices, whether such principall bee attainted, conuicted, or otherwise discharged, or not. And after that they doe certifie, that such principal is attainted, conuicted, or otherwise discharged of such offence, Then the said Iustices &c. shall proceed vpon euerie such accessorie in the Countie where he became accessorie, in such manner and forme, as if both the said principall offence and accessorie had beene committed in the same Countie where the offence of accessory was committed, and euerie such accessorie and other offendors aboue expressed, shall answer vpon their Arraignements, and receiue such triall, iudgement, order, and execution, and suffer such forfeitures as is vsed in other cases of felonie.

Indictment of an accessorie in one County to an offence done in another.

Trial of an accessorie in one Countie, to an offence done in another.

Stat. 2. & 3. E. 6. 24.

17 If one receiue goods stollen, or anie parcell thereof, yet he shall not be accessorie to the felonie, if he doe not receiue the felon himselfe. But if he doe receiue the goodes stollen, and also the felon, he shall be accessorie to the felony, so that the same felon be before accessory of the same felony. S. Indict. 34.

Receiuing of stolne goods.

27. Ass pla. 69
25. Ed. 3 39.
9. H. 4. 1

18 If a felon doth flie, and come to his friends house, and his friend doth shut the doors, and the countrey which pursueth him, doe thinke that the Felon doth continue in the house, whereas he escapeth: In this case the friend shall be adiudged accessorie to this felonie, for that his friend did ayd and relieue him, and endeuoured to defend him from the iustice of the Lawe. See Escape 2.

Receiuing the felon.

Fit. cor. 427

19 And also a man may be accessorie to an accessorie: as if one doe receiue him who is accessorie to a felonie, by this meanes he himselfe shall be accessory to this accessorie, because that first accessorie is a felon.

Accessorie to an accessorie.

26 Ass pla. 52

Reſcue of a felon.

20 If one doe reſcue him that is arreſted, connicted, or attainted of felonie, hee is a principall felon, and not an Acceſſorie: and the reaſon is, for that this is a new Felonie by it ſelfe, though it doth depend vpon the former Felonie. 18.H.7.6

A wife no acceſſorie to her husband. A maried wife a principall felon.

21 A woman couert cannot be acceſſorie in felony to her husband, for that by the Lawes of God ſhee ought not diſcouer his counſell: But by force of a Statute made Anno 1.Mar. a wife ſhall be a principall felon, if ſhee do ſend, deliuer, or conuey anie reliefe to her husband, which amongſt others, to the number of twelue or aboue, ſhall be aſſembled, practiſe, and put in vre anie of the offences prohibited by the ſaid Statute, prouided againſt Rebellious and vnlawfull aſſemblies, Anno 1.M.12. S.Felonies by Statute 31. Stat.1.M.12 Sta.1.Eliz.16

Acceſſorie to offences made felony by ſtatute.

22 If an offence bee made felonie by Statute, although the ſame Statute doth not expreſſly make mention of abettors, procurors, councellors, and receiuers, yet they ſhall be taken within the compaſſe of the ſame Statute: as the conſenter and aider to the counterfeiting of the great Seale, priuie Seale, or the Kings money, is Treaſon; and yet the words of the Statute be, if any do counterfeit &c. which the other doth not, becauſe he was but conſenting and aiding thereunto. 19.H.8.47 Sta. 25.E.3.2

Rape.

23 In Rape, if one doe commit the fact, and another doth aide and aſſiſt him therein, hee is thereby a rauiſher, as well as his companion which committed the Rape; and yet the words of the Statute of Weſtminſt.2. be, If a man doe rauiſh a woman: for the aſſiſtant was the cauſe of the offence, without whom peraduenture the Rape had not beene done. And he is principall, becauſe he was preſent when the fact was done, and therefore as much guilty as he which did the fact. And yet in the foreſaid caſe, if hee be indicted for committing of a Rape, one for doing the fact, and the other for ayding and aſſiſting him, whereby they both be principalls: if he that was indicted for aiding and aſſiſting, be firſt arraigned, and by one Enqueſt found guiltie, and after he that was indicted for doing the act is arraigned, and by an other Enqueſt is acquite. In this caſe iudgement ſhall not be giuen againſt him who was found guiltie of aiding and aſſiſting, becauſe he cannot be guiltie but in reſpect that the principall actor was guiltie: and hee being found not guiltie of doing the fact, the other could not be aiding and aſſiſting to a thing which was not done: And ſeeing both the verdicts cannot be true, but one of them muſt needs be falſe, the Iudges ought to giue more credit to the verdict which acquited him who was charged with doing of the fact, than to the other: For the Enqueſt which acquited him that was charged with the fact, was charged vpon the principal point, viz. if the ſuppoſed rauiſher committed the rape or not, and the other Enqueſt was not ſo fully charged vpon the principall point, but onely whether he that was indicted of aiding and aſſiſting, be guiltie of the felony whereof he is impeached, viz. of the aiding and aſſiſting. St.13.E.1.34 11.H.4.13 Fit.cor.228 Br.Appeale,2 Plow.com.97

Imbeſiling of Records.

24 By the Statute of Anno 8.H.6.12. it was ordained, That if anie Record, or parcell of the ſame, writ, returne, panell, preces, or warrant of Attorney in the Chauncerie, &c. be willingly ſtolne, taken away, withdrawne, or auoyded by any Clerke &c. ſuch ſtealer, taker away, withdrawer, and auoyder, their procurors, counſellors, and abettors, being thereof indicted, &c. ſhall be adiudged felons. S. Felonies by Statute 16. Sta.8.H.6.12

25 By

Rot. 1 M. 12. Stat. 1. El. 16

25 By the ſtat. of an 1. M. 12. 1. El. 16. it is enacted, That if any wife or ſer- nant (of any of the perſons being in rebellious maner vnlawfully aſſembled, contrary to the ordinance of the ſame ſtatute) or any other perſon whatſoever, ſhall willingly, and without compulſion, bring, ſend, deliuer, or conuey anie money, harneis, artillerie, weapon, meat, drinke, or other victual, to any per- ſon or perſons ſo being aſſembled, during ſuch time as he or they ſhall be ſo aſ- ſembled, or be together, then euery wife, ſeruant, or other perſon, ſo bringing or cõueying any of the foreſaid things to the ſame perſons ſo being aſſembled together in forcible maner, or to any of them, and not departing to their hou- ſes vpon requeſt or commaundement made, ſhall be adiudged felons. But no perſon ſhall be put to any loſſe, forfeiture, paine, or punishment of life, lands, or goodes, as acceſſorie to any perſon or perſons, that ſhall commit anie of the offences contained in this Act, for receiuing, comforting, or aiding of any ſuch offendor after ſuch act committed or done. S. Felonies by Statute 31. Riots &c. Rebellious aſſembles.

Stat. 1. Iac 12

26 By the ſtatute of Añ 1. Iac. it was ordained, That if any perſon or per- ſons ſhall vſe, practiſe, or exercile any inuocation, or coniuration of anie euill or wicked ſpirit &c. then euery offendor or offendors, their aiders, abettors, and counſellors, being of anie of the ſaid offences lawfully conuicted and at- tainted, ſhall ſuffer paines of death as a felon or felons, without benefit of Clergie or Sanctuarie. S. Felonies by Stat. 29. Conjuration.

Stat. 3. H. 7. 2.

27 By the ſtatute of Anno 3. H. 7. 2. it was prouided, That if any perſon ſhall take any maid, widow, or wife, which hath lands or goods, or is heire ap- parant to her auncellor, againſt her will, vnlawfully, ſuch taking, procuring, and abetting to the ſame, and alſo receiuing wittingly the ſame woman ſo ta- ken againſt her will, and knowing the ſame, ſhall be felonie: And ſuch miſ- doers, takers, and procurers to the ſame, and receiuers, knowing the ſaid of- fence in forme aforeſaid, ſhall be reputed and iudged as principall felons. S. Felonies by Statute 5. Taking a woman a- gainſt her will.

Br. 23, 24, 25, 26, 27.

28 Note that in all the Caſes aforeſaid touching offences made felonie by Statute, the aiders, abettors, and counſellors be made principalles, by the ſpeciall wordes of the ſame Statutes, and not acceſſories to the ſame Felo- nies. Aydors are as principals.

27 Aſſ. pla. 10 8. li. 5, 6.

29 If one be acquited of the principall act, he is acquited of all offences committed as acceſſorie, before the doing of the principall fact; but not of of- fences committed as acceſſorie after the principall fact. A man being indicted as acceſſorie in murder was acquite by verdict, and after he was indicted as principall of the ſame murder, and was found guiltie, and hanged, for though it concerned the ſame murder, yet it was not the ſame offence whereof he was firſt arraigned. Acquitall of the principall is acquitall of acceſſorie.

2. Ed. 3. 26. Bro. Cor. 185. Co. lib. 4. 43.

30 A. brought an appeale of the murder of B. his brother, againſt C. as principall, and D. as acceſſorie before the murder committed, and E. as accel- ſorie after the murder. C. the principall pleaded not guiltie, and by the Iurie was found guiltie of manſlaughter, but not of murder, and then prayed, and had his Clergie: In this caſe, D. which was charged as acceſſorie before the offence committed, was diſcharged, becauſe he cannot be charged as acceſſory before the act of manſlaughter committed, for manſlaughter doth follow vpon Principall and acceſſorie in manſlaugh- ter.

a sodaine debate, or fray, for if it be premeditate, it is murder. And because C. the principall had his clergy before iudgement, so that it did not appeare by the iudgement of Law, that hee was principall, both the accessorie before, and the accessorie after the manslaughter were discharged. And so it is, if the principall vpon his arraignement, doth confesse the felonie, and before iudgement hath his pardon, or clergie allowed, the accessorie shall be discharged. S. Br. 516

Two attainders.

31 There be two manner of attainders, whereof the one is vpon apparance, that is to say, by confession, verdict, or battell: the other is by default vpon processe of outlarie. And in both cases the principall ought to be attainted before the accessorie: as it doth appeare by these words of the Statute of Westminst. 1. viz. No person shall be outlawed vpon appeale of commaundement, force, aide, or receit, vntill he that is appealed of the fact be attainted: and one law shall be kept throwe the whole Realme: But he that will appeale shall not let to attach his appeale at the next Countie, as well against the accessorie, as against the principall; and yet the Exigent shall stay vntill the principall be attainted, by outlarie or otherwise. And to the like effect be these words of the Statute of Officium Coronatoris, If any be appealed of an act done as principall, they that be appealed as accessorie shall be attached, and surely kept vntill the principall be attached. Stat. 3. E. 1. 14

The principall shall be attainted before the accessorie.

Stat. 3. Ed. 1

32 The foresaid Statute of Westminst. 1. is to be intended of Appeale commenced by Bill, but not of appeales commenced by Writ: for of appeales commenced by writ, there doth not appeare anie to be accessorie, vntill the count be made, which is not made vntill there be an apparance of the accessorie. And therefore in that case where the appeale is commenced by writ, if the Plaintife will pray an Exigent against them all, he is thereby concluded to count against anie of them as accessories: for if he should so doe, he ought not to haue had the Exigent against them vntill the principall had beene outlawed, and therefore therein he is concluded. 43. Ed. 3. 18. 7. H. 4. 27

Appeales cõmenced by writ or bill.

33 Where the words of the foresaid Statute of Westminster be, That he which is appealed of the fact shall be attainted before the accessorie be outlawed: If at the time that the accessorie is come to the Exigent the principall doth appeare, and so the processe is determined against him: Notwithstanding, because he is not as yet attainted, the Exigent shall not be awarded against the accessorie, vntill the principall be attainted. And this is to be intended where the accessorie doth not appeare, but maketh default. S. Triall by the Countrey 8. 7. H. 4. 36.

Principall shall be attainted before the Exigent against the accessorie.

34 If Processe be awarded against the principall and accessorie, and the principall maketh default, and the accessorie doth appeare; in this case the accessorie shall answer: But if he pleade to an issue, processe shall not be awarded against the Enquest, vntill the principall doe appeare, or be attainted by processe, viz. be outlawed. And yet this processe against the Enquest shall not cease vnlesse the accessorie will: for if the accessorie will request to haue processe against the Enquest before the principall be attainted, he shall haue it, for that it is preiudiciall to none but to the accessorie himselfe: and whether he be attainted or acquited, it is good. And he shall not be arraigned againe, for the taking of the Enquest is not erronious. 9 H. 4 2. 7. H. 4. 16. Fitz. Cor. 12. 8. H. 5. 6.

The principall maketh default, and the accessorie appeareth.

35 If

Fitz. Cor. 12

35 If proceſſe be awarded againſt the principall and the acceſſorie, and the principall maketh default, and the acceſſorie doth appeare, if the acceſſorie will wage battell with the appellant before the principall doth appeare, he may: for he may waiue the benefit which the Law doth giue him, if he wil.

The acceſſorie wageth battell.

9.H.4.2.

36 If the principall doe make default, and the acceſſorie doe appeare and pleade, then if the plea which the acceſſorie pleadeth be a plea in abatement of the whole writ, the principall shall take aduantage thereof, notwithſtanding his abſence: So that the Exigent which is to be awarded againſt the principall shall be ſtayed, vntill it be knowne whether the whole Writ shall abate, or not.

Acceſſorie pleadeth in abatement of the writ.

37 If both the principall and the acceſſorie do appeare, then the principall shall anſwer firſt, and the acceſſorie after: for the principall may pleade ſuch a plea, that the acceſſorie shall not be put to anſwer vntill the principals plea be tried. And that is in caſe where the principall doth not pleade directly to the felony, but ſome other plea: as if hee do pleade that hee himſelfe was at an-

9.H.7.19.

other time attainted of the ſame felonie, &c. And the appellant doth take iſſue thereupon, viz. not compriſed, &c. In this caſe the acceſſorie shall not be put to anſwer vntill this iſſue be tried.

Both the principall and acceſſorie do appeare. Where the principals plea shall be tried before the acceſſories anſwer.

38 And ſo it is if both the principall and acceſſorie doe appeare, and the principall doth pleade a plea in abatement of the whole Writ of Appeale, then the acceſſorie shall not be put to anſwer vntill this plea be tried.

The principall pleadeth in abatement of the writ.

Fitz. Cons. 10.

39 If the principall and acceſſorie doe both appeare, and the principall doth pleade to the felonie, viz. not guiltie, then the acceſſorie shall preſently after that plea pleaded, pleade alſo. And if they be at iſſue, one Venire facias shall be awarded for them both: But if at the day of the Venire facias returned, or at the time of the apparance of the Enqueſt, the principall being in the meane time let to mainprize, doth make default, and not appeare, the Enqueſt shall not be taken againſt the acceſſorie.

The principall pleadeth not guiltie.

2. & 3. P. & M. Dier 120

40 If there be diuers principalles, and one acceſſorie, or more: and proceſſe is awarded againſt all the principalls, and the acceſſorie, and ſome or one of the principalls do appeare, and ſome not, and alſo the acceſſorie doth appeare: in this Caſe proceſſe shall not be awarded againſt the Enqueſt for the triall of the acceſſorie, vntill all the principalls do appeare, or be attainted by outlarie, viz. if hee be indicted or appealed as acceſſorie to them all. But it is otherwiſe if he be indicted or appealed onely as acceſſorie to ſome of thoſe principalls: for there it is ſufficient to haue that principall, or thoſe principals only to appeare, or to be attainted by outlarie, to whom he is appealed or indicted as acceſſorie, without having regard to the reſidue.

40. Aſſ. pla. 25 7 H.4.16. Plow. com. 99

Seuerall principals and one acceſſorie.

41 To haue Proceſſe awarded againſt the Enqueſt for the triall of the acceſſorie, it is requiſite, that the attainder of the principall be in the ſame ſute, in the which hee and the acceſſorie be ſued: for if hee be attainted in an other ſute, that shall not enforce the acceſſorie to proceede with his Enqueſt vntill the principall which is ſued with him doth appeare, or be attainted by proceſſe

7.H.4.36.

of outlawrie, &c. As in appeale of homicide againſt the principall and acceſſorie, and the principall before that time is attainted of the death of the ſame

The attainder muſt be in the ſame ſute.

man vpon an indictment at the Kings ſute. And the accessorie ſhall pleade for his owne diſcharge the acquitall of the principall in an other ſute; ſo that it be an acquitall for that offence for the which he is charged as accessorie.

The principal attainted, and dieth.

42 If the principall be attainted of the death of a man, and then dieth, and the Juſtices before whom the accessorie is ſued haue the record of the ſame attainder before them, then they may proceede againſt the accessorie, otherwiſe not: for it doth by the Record appeare vnto them, that hee which was appealed of the fact, is by Law attainted of felonie, according to the foreſaid ſtatute of Weſtminſt. 1. though he was not executed therefore. 7.H.4.27

The principal ſtandeth mute.

43 And though the Lawe be, that an Enqueſt ſhall not proceede againſt the accessorie to trie him vntill the principall doe appeare, or be attainted by outlarie, yet if the principall do appeare, and will ſay nothing, but ſtand mute, the accessorie ſhall be arraigned. Sed quære; for the principall is not attainted of felonie. Fitz.Cor.58

Error in the Attainder of the principall.

44 If the Attainder of the principall be erronious, yet the accessorie ſhall be arraigned: for the accessorie ſhal take no aduantage of any errour committed in the attainder of the principall. 2.R.3.22.

An abiured accessorie returneth.

45 If one doe abiure as accessorie, and after doth returne againe, the principall not being attainted, the accessorie ſhall be hanged: for that he hath confeſſed the felonie before the Coroner, and did returne without the kings pardon or licence. Fitz.Cor.124.

The accessory tried vpon his owne requeſt.

46 If the accessorie of his owne deſire wil wage battel before the principal be attainted, and be ſubdued therein: or will deſire to haue an Enqueſt to trie him before the principall be attainted, and be found guiltie therefore: In both theſe Caſes he ſhall be hanged, though by the Lawe hee was not compellable to either of the ſaid trialles, vntill the principall had beene attainted; for hee hath aduentured his life, in hope to gaine his libertie. Fitz.Cor.12.

The principall found not guiltie.

47 If the principall be found not guilty by verdict, the accessorie ſhall be diſcharged thereby: for where there is no deede, there can no force, aide, or commaundement hurt, in that the intended iniury toke no effect. So that the acquitall of the principall is in Law the acquitall of the accessorie. Bracton.

The principall dieth in priſon before attainder.

48 If the principall can not be tried (as if he die in priſon before he be attainted of the felonie) the accessorie ſhall be thereby diſcharged: for there can none be found accessorie to a felonie, where there is none attainted to commit the ſame felonie. But otherwiſe it is if the principall be attainted of the felonie, and dieth, there the accessorie ſhall be arraigned, and hanged, if hee bee found guiltie. Co.lib.4.43.

The principall attainted of an other felonie.

49 If the principall be attainted of an other felonie, and hanged, before hee is attainted of this felonie whereof he and the accessorie be indicted, the accessorie to this felonie ſhall be diſcharged thereby. And the ſame Lawe is, if hee be attainted of the firſt felonie, though hee be not hanged: becauſe in that caſe after attainder, hee ſhall not anſwer to other felonies, but onely to robberie and treaſon. Fitz.Cor.378

Fitz. Cor. 116

50 If it be found by verdict that the principall slew him, of whose death he is arraigned, in his owne defence, the accessorie shalbe thereby discharged: And yet the principall shall be enforced to purchase his pardon: But this pardon prooueth not, that he is guilty in other maner than in his owne defence. Notwithstanding, in an other pardon it is otherwise; for if a principall pleade his pardon to a felony generally, without any speciall matter found, which should cause the pardon, and is by that discharged; yet that will not discharge the Accessorie, but he shall be hanged if he be found guilty of the felonie: for by that pardon the felony is confessed, of the which felony, he praieth to be discharged by the Kings fauour, and not by the benefit of Law, as he doth in the other case.

The principall slew the partie in his owne defence.

2. Ed. 3. 27.
Fitz. Cor. 260.
3. Ass. p. 14
42. Ass. p. 18.

3. H. 7. 12.
10. H. 4. 5.
13. Ed. 4. 3.
Bro. Cor. 184.

51 And in the like case, and vpon the same reason, if the principall and accessory be arraigned offelonie, and both be found guilty, and the principall doth pray, and hath the benefit of his clergie; yet the accessorie shalbe hanged: for by the praying of his clergie, the felony is confessed, and the principall in this case is not saued by his innocencie, but by a priuiledge in Law, which the accessory, being no clarke, cannot take the benefit of: But it is otherwise, if there be principall and accessorie, and the principall is pardoned, or hath his Clergie before

The principall hath his Clergie.

Co. L. 4. 43.

iudgement, the accessory shall not be arraigned: for where there is no fact, there is no force, and where there is no principall, there can be no accessorie, and no man can be accounted principall, before it be so prooued and adiudged by the Law, and that must be by a iudgement vpon a verdict, confession, or outlawry: and it is not sufficient that indeed there be a principall, vntill that appeareth by a iudgement in Law. And the acceptance of pardon, or the praying of his clergy is an argument, but no iudgement in law, that he is guilty. But if the principall after attainder be pardoned, or hath his Clergie allowed, the accessory shall be arraigned (and hanged if he be found guiltie) for it doth appeare iudicially, that he was principall.

The principall is pardoned, or hath his clergie before iudgemẽt.

41. Ass. p. 24.

52 The acquitall of the principall, is the acquitall of the accessorie (as is aforesaid) if it be not in an Appeal, where the accessorie is to recouer damages: for if he will recouer damages, he must be tried, notwithstanding the acquitall of the principall. But some do thinke, that he shall recouer damages by the acquitall of the principall without being further tried: or otherwise it would ensue, that the Court should admit an accessorie, where there had been no principall, which were inconuenient.

In appeal the acquitall of the principall is not the acquitall of the accessorie.

Breaking

Breaking of Priſon, and Reſcous.

BY the common Law of this Realme, if a man had bẽn impꝛiſoned, and bꝛoken the pꝛiſon, he ſhould haue bẽne hanged, foꝛ what cauſe ſoeuer he had bẽne impꝛiſoned, yea although it had bẽne but foꝛ treſpaſſe. Which great enoꝛmitie was ꝛedꝛeſſed by the ſtatute of Anno 1. Ed. 2. intituled, de Frangentibus priſonam; the woꝛdes whereof be theſe. Touching Pꝛiſoners bꝛeaking of Pꝛiſon, our Loꝛd the King doth will and commaund, that none which from henceforth do bꝛeake pꝛiſon, ſhall haue iudgement of life, and member, foꝛ the bꝛeaking of pꝛiſon onely, except the cauſe foꝛ the which he was taken & impꝛiſoned doth ꝛequire ſuch iudgement, if he ſhould haue bẽne conuicted thereof accoꝛding to the lawe and cuſtome of the Realme, though in times paſt it hath bẽne otherwiſe vſed. And therefoꝛe it is to be conſidered, who is a pꝛiſoner, and what is bꝛeaking of pꝛiſon, accoꝛding to the meaning of the foꝛeſaide Statute. Euery perſon who is vnder arreſt foꝛ felonie, is a pꝛiſoner, aſwell being out of the Gaole, as within: So that if he be but in the Stockes in the ſtꝛete, oꝛ out of the Stockes in the poſſeſſion of any that hath arreſted him, and doth make an eſcape; that is a bꝛeaking of pꝛiſon in the pꝛiſoner: foꝛ impꝛiſonment is none other, but a reſtraint of libertie. Sta. 1 Ed. 2.

Who is a Pꝛiſoner. 1 Ed. 3. 17. 1 M. Dyer 99.

2 Though the letter of the ſtat. of Aũ 1 Ed. 2. be touching pꝛiſoners bꝛeaking of pꝛiſon, yet if a ſtranger do bꝛeake the pꝛiſon, he is within the compaſſe of this ſtatute, foꝛ that by the common lawe this was a bꝛeaking of pꝛiſon in a ſtranger, and felonie in him at that time, and is felonie alſo at this time in the pꝛiſoner, that eſcapeth by foꝛce of ſuch bꝛeaking of pꝛiſon by a ſtranger, although beſoꝛe the ſaid Statute it was not felony in the pꝛiſoner. 1 H. 7. 6. 35 Ed. 3. 42. 1 Ed. 3. 17.

A ſtranger bꝛeaketh pꝛiſon.

3 If a Gaoler, oꝛ any other which kẽpeth a pꝛiſoner vnder arreſt doe let him goe at libertie, this is not felonie in the pꝛiſoner, becauſe it was no bꝛeaking of pꝛiſon in the Gaoler: But all the felony in this caſe reſteth in him who did let the pꝛiſoner eſcape, and that is by a voluntary eſcape, and not by bꝛeaking of pꝛiſon: which is felony in him that ſuffered him to eſcape.

Letting a pꝛiſoner eſcape.

4 If by the negligence of the Gaoler, oꝛ any other which hath the pꝛiſoner vnder arreſt, the pꝛiſoner doe eſcape: this is felonie in the pꝛiſoner that doth eſcape, foꝛ that the pꝛiſoner in making of eſcape did bꝛeake the pꝛiſon: but it is not felonie in him out of whoſe cuſtodie he did eſcape. 2 Ed. 3. 21

Negligent eſcape.

5 To

Reſcuing of a priſoner.

5 To breake priſon is intended aſwell of a Reſcous made of a priſoner, as of breaking of priſon: As if a priſoner be vnder arreſt for felony, and a ſtranger will felonioufly take him out of the poſſeſſion of him that hath arreſted him, this Reſcous is a breaking of priſon, and is felonie, as wel in the partie which eſcapeth, as in him that made the Reſcous, and ſo was it by the common law. 1.H.7.6.

Diſturbing of arreſt.

6 If a ſtranger diſturbe the arreſting of a felon, that manner of Reſcous is not felony; for the letting of a felon eſcape, which is not arreſted for felony, is not felony: but if the felon had bẽn taken, and arreſted, and after reſcued, this had bẽn felony. Fitz.Cor.333.

The Shirife returneth a Reſcous.

7 If the Shirife returne a Reſcous of a felon taken out of his poſſeſſion, or do returne an eſcape, that the priſoner eſcaped from him; this will not ſerue as an indictment to put the party to anſwer thereunto, for that it is contrary to the Statutes of 25.Ed.3. 28.Ed.3. & 42.Ed.3. which haue ordained, That none ſhal be impriſoned, or put out of his freehold, without an indictment or preſentment before Juſtices, or ſome matter of Record, or by due proces, or by writ originall, which the Sheriffes returne is not, S. Indictment 19. 2.Ed.3.1. 1.H.7.6. Sta 25 E 3.4. 28.Ed.3.3. 42.Ed.3.3.

Whoſe the priſon broken muſt be.

8 It is no difference whoſe priſon the offendor doth breake, viz. whether it be the Kings priſon, the Lords of a fraunchiſe, or any other perſons: for whoſe ſoeuer it be, the offendor is within the compaſſe of this ſtatute, though it was otherwiſe before the ſtatute, viz. it was not Felonie, vnleſſe he had broken the Kings priſon. 2.Ed.3.1. Britton.

Attachment for treſpaſſe.

9 If one be attached and taken for treſpas, and he which is attached doth eſcape, or is reſcued by a ſtranger, this is no felonie, but treſpas: for that the Statute ſaith: Except the cauſe for the which he is taken and impriſoned doth require ſuch iudgement. But yet the fine ſhall be according to the qualitie of the perſon to whom the Reſcous is made, and according to the time and place, when, and where it is done. And therefore if a Juſtice aſſigned ſhall arreſt a man that maketh a fraie before him, and a ſtranger doth reſcue him, by force whereof the priſoner eſcapeth: in this caſe as well the priſoner, as he that made the reſcous, ſhall be diſherited, and ſhall ſuffer perpetuall impriſonment: for that the attachment of ſuch a Juſtice, was the attachment of the King himſelfe in the iudgement of the law. But if ſuch a Juſtice make an arreſt when he is out of his place, then ſuch an arreſt and eſcape is but fineable, nor of any other effect, but as if the Shirife, or ſome other officer had made the arreſt. St.1.Ed.2. 22.Ed.3.13.

A Juſtice ſitting in iudgement arreſteth an offendor.

Reſcous after iudgement.

10 If a man be reſcued at the gallowes, or as he is in going to execution, this is within the compaſſe of this ſtatute: for the words of the Statute ſhall be intended aſwel in the preter tence, as in the preſent tence: viz. as wel of iudgement giuen, as of iudgement to be giuen; for the cauſe for the which he was taken and impriſoned did require ſuch iudgement. 1.H.7.6.

The impriſonment and not the attainder reſpected.

11 It is not material whether the priſoner which did eſcape, was or ſhould haue bẽne attainted of the felonie, for the which he was impriſoned, ſo that he were in priſon for felony, at the time of breaking of priſon: for a ſtranger which did reſcue one that was indited of felonie, was indited, arraigned, and found guiltie thereof preſently, before the principall felonie tried. 1.E.3.17.

Impriſoned for Treaſon.

12 If a man impriſoned for felonie, doth breake the priſon, and let eſcape a priſoner that is in priſon for treaſon, this is petit treaſon in him that did breake the priſon. 1.H.6.5. 3.Treaſon 9.

Diſobeying of a warrant.

13 By a Statute made Anno 1.H.7. it is ordained, That it ſhall be felony for any perſon which ſhould be arreſted, to diſobey, or make reſcue to any perſon having warrant to arreſt a hunter in the night in any foreſt, parke, &c. or with painted faces, &c. ſo that execution of the ſame warrant be not had. S. Felonies by ſtatute 30. 22.1. H.7.7.

Confeſſion before a Coroner.

14 The confeſſion of breaking of priſon before the Coroner is an attainder in it ſelfe, without any more; if the cauſe of the impriſonment be for felonie. 25.Ed.3.42. Fitz. Cor. 243 435.

Opening the priſon, but not eſcaping.

15 If a man come to a priſon, and ſetteth open the priſon doore, & perſuadeth the priſoners which be in the Gaole, to come forth of priſon, & to depart, yet if the priſoners doe not come forth, and eſcape, this is no felony in him or them: but if any of the priſoners doe eſcape, then is it felonie in him or them that did eſcape, and in him alſo that ſet open the doore. And a man is alwaies ſaid to be in priſon, ſo long as he is within ſight of the Gaoler, or of him that hath him in cuſtodie, though he doe eſcape, or breake away. Kel. fol. 87. 30.H.8. Dyer 44.

Eſcape

Eſcape.

Voluntarie Eſcape.

THere be two kinds of Eſcape, viz. voluntarie, and negligent: Voluntarie Eſcape is, when one doth arreſt another for Felony, or other offence, and after letteth him go at libertie whither he will; this letting him go at libertie is a voluntarie Eſcape. And if the arreſt of him which did eſcape, was for felonie, it ſhall be adiudged felonie in him which did let him eſcape: And if it were for Treaſon, then it ſhall be adiudged Treaſon. But it is not materiall whether he that eſcaped, was arreſted by him that ſet him at libertie, or by ſome other, ſo that he were arreſted: for without arreſt it ſhall not be accounted an eſcape. If a felon be in a houſe, and an other not ſeeing him being in the ſtreet, doth call to him, and telleth him, that he doth attach him, but doth not arreſt his perſon, this is no arreſt.

Mr Lex 36.

27. Aſſ. p. 9.

Eſcape of an offendor not arreſted.

2 If a man receiue a felon, knowing of the felonie which he hath committed, and willingly ſuffer him to eſcape, this ſuffering the felons eſcape, is not felony in him that receiued the offendor, becauſe he did not arreſt him. S. Principall &c. 17. and 18.

9. H. 4. 1.

Felonie at the time of the Eſcape.

3 Alſo ſuch an eſcape is not felonie, if it were not felonie at the time of the eſcape made: for notwithſtanding that the firſt act, for the which the partie was arreſted, is after become felony, yet that ſhall not make the eſcape felony, which was not felony at the time of the eſcape. As if A. do ſtrike B. whereupon the Conſtables do arreſt A. and willingly ſuffer him to eſcape, and after B. dieth of that ſtroak, this is not Felony; for that B. being liuing at the time of the arreſt, and eſcape of A. it was then no felonie in A. But yet in this caſe, the party which arreſted the offendor, ſhall pay to the King a fine to the value of his goods, becauſe the eſcape was voluntarie, and vpon an hainous offence before committed: for the Law hath alwayes ſo much endeuored to repreſſe and puniſh Felons, that if one man do kill an other, and a third man is preſent at the ſame time, but of no confederacie with the manqueller, yet if he being of full age, do not his beſt endeuor to apprehend the ſame felon, he ſhall be impriſoned vntill he hath made fine to the King therefore.

11. H. 4. 4.

Fitz. Cor. 393 331, 395.

Negligent Eſcape.

4 Negligent Eſcape is, when one is arreſted for felonie, and after doth eſcape againſt the will of him that arreſted him, and is not freſhly purſued, and taken againe, before the purſuer ſhall loſe the ſight of him: this ſhall be adiudged a negligent Eſcape, notwithſtanding that he out of whoſe poſſeſſion he eſcaped, did take him againe after he loſt the ſight of him.

Fitz. Cor. 236, 400.

Killing him that eſcapeth.

5 If is a negligent Eſcape, if the purſuer do kill the partie which eſcaped in the purſuit of him, as he is carrying him to the Gaole, though he did neuer loſe the ſight of him: for by this meanes the partie that eſcaped cannot be attainted of Felonie, and ſo the King ſhall loſe his Eſcheates. Fitz.Cor.328. 346.

Taking againe the partie eſcaping.

6 Vpon freſh ſuit the Gaoler may take againe the priſoner which eſcaped ſeauen yeares after the eſcape made, notwithſtanding that in the meane time he loſe the ſight of him: but that will not diſcharge the Gaoler of his fine for the ſame eſcape. And if the Shirife be in carrying one that is condemned to die to the place of execution, and the priſoner be reſcued, and taken from him by force, & the Shirife doth againe take away the priſoner from thoſe that did reſcue him, and hang him: this ſhall not be adiudged an eſcape in the Shirife. 13.Ed.4.9. 14.H.7.1. Fitz.Na.Br. 130. 6.H.7.12.

Licence to go to an other towne.

7 If a Gaoler licence his priſoner to go to an other Towne, and to come againe, this is a negligent eſcape, becauſe the priſoner in this caſe was found out of the bounds of the priſon. Fitz.Cor.242.

Licence to go into the ſame towne.

8 If a Gaoler giue leaue to his priſoner to go into the ſame Towne, and to come againe, and he wandreth into an other Towne out of his preſcribed limits, and is there found wandring with an intent to eſcape, this is a negligent eſcape in the Gaoler. Fitz.Cor.432.

Mainprize.

9 If one which by the Law is not mainpernable, be let to mainprize, that ſhall be adiudged a negligent eſcape in him who did let him to Mainprize. 25.Ed.3.39.

Petit Larceny.

10 As an eſcape may be of one that is impriſoned or arreſted for Felonie: ſo it may be of him, that is arreſted, or in priſon for petit Larcenie: But not of any that is arreſted or impriſoned for Treſpas. Fitz.Cor. 430.432.

Eſcape by returne of Cepi corpus.

11 A Capias was awarded to the Shirife to arreſt one of Felonie, and he thereupon did returne Cepi corpus, and at the day had not the bodie: vpon this matter of Record, it was adiudged an eſcape in the Shirife: and he was amerced a hundred ſhillings. 40.Aſſ.p.42.

Double eſcape.

12 If an offender be in priſon at the ſuit of one man, and then at an others, or of diuers men, and he doth eſcape: this ſhall be adiudged but one eſcape, and the Gaoler ſhall be charged but with one eſcape. But if one that is arreſted for felony do eſcape, and flie to the Church, & after eſcapeth out of the Church, theſe ſhall be adiudged two eſcapes; viz. one from the priſon, and an other from the Church. And the Gaoler, or other who ſuffereth him to eſcape ſhall be charged with the firſt of thoſe Eſcapes, and the Towne wherein the Church is with the laſt of them. 26.Aſſ.p.51. Fitz.Cor.432.

Eſcape without arreſt.

13 There be certaine caſes wherein an eſcape ſhal be adiudged, though there was no arreſt before: as if one be murdred or ſlaine in a Town in the day time, & the murderer do eſcape without being taken or arreſted by thoſe of the towne: in this caſe thoſe of the towne ſhall be charged with this eſcape, that is to ſay, they ſhal be amerced for it, and though the eſcape be at the euening. And by the ſtatute of Winchester, viz. of 13.E.1. If a man be robbed, and the felon doth eſcape, & be not taken within fiue Monethes, the town or hundred ſhal anſwere the party robbed that made hue and crie, for the robberie, & the dammages. Sta.3.H.7.10. 4.El.Dyer 210. Fitz.Cor. 238.293. St.13.Ed.1. 1.2.

14 If

Fitz.Cor.302. 14 If one doe kill an other by miſaduenture, or in his own defence, and do eſcape, the towne where he was ſlaine ſhalbe amerced for it though the offendor was not arreſted: for the people of the towne do ſee a man ſlaine, but they are not to iudge, whether it be felonie or not; and therefore they ought to haue apprehended the manqueller. who ſhalbe charged with an eſcape.

15 As the law is of a towne not walled in, or incloſed, touching a murder committed in the day; ſo is it of a citie or towne incloſed, of a murder committed in the night: for if in a towne incloſed one be murdered, be it done by day or
Fitz.Cor.299. night; if in that caſe the murderer doe eſcape, the towne or citie incloſed ſhalbe amerced: becauſe the citie or towne incloſed ought by the Statute of Winchester to be kept faſt locked, from the Sunne ſetting, to the Sunne riſing. Eſcape in a towne walled.

Fitz.Cor.352. 425. 16 If a felon doe flie to a Church, and before abiuration he doth eſcape: in this caſe the towne where the Church is, ſhall be charged with this eſcape, viz. they ſhalbe amerced for it. But this muſt be before abiuration, for if he doe eſcape after abiuration, the town ſhall not be charged therewith, for that by the abiuration, he is in law attainted. Flying to a Church and eſcaping.

17 And ſo it is if a felon take a Church, which by the law cannot make abiuration: in this caſe, if he flie from thence the towne ſhall not be charged with an eſcape: As if a man that is adiudged to be hanged, doth eſcape from the ſherife, when he is in carrying him to the gallowes, and doth take a Church, and
27.Aſſ.pl.54. Fitz.Cor.313. 335. then eſcape: the town where the Church is, ſhall not be amerced for this eſcape; for that in this caſe, he cannot make an abiuration, which is an attainder in it
9 Ed.4.28. ſelfe, being attainted before. Eſcaping by making abiuration.

18 And ſo it is to be noted, that a city, borough, or towne may be charged with the eſcape of an offendor, which hath committed murder, or homicide, though he were not arreſted: But one, two, or more priuat perſons cannot be charged with the eſcape of an offendor, vntill he be arreſted. Eſcape before or after arreſt.

19 If the Shirifes bailife doe arreſt one for felonie in a town, and do carry him towards the priſon, and certaine perſons of the towne doe go with the
Fitz.Cor 328. 337. bailife to aſſiſt him, & the felon eſcapeth by the way, the ſherife ſhalbe charged with the eſcape: but it ſhalbe otherwiſe if the felon be committed to the people of the towne to carrie to priſon; for in that caſe, if the priſoner doe eſcape, the towne ſhalbe charged therewith. Where the Sherife, and where the towne charged.

Fitz.Cor.316. 20 One was arreſted for felonie, and led to the hundred court, and then he was perſuaded to goe abroad, and ſeeke his warrant, viz. one that ſhould warrant him thoſe goods, which he was charged to ſteale, and he went, and fled to the Church, and abiured: In this caſe the whole hundred was charged with the eſcape, and the partie who gaue him the counſell, and leaue, paid a great ranſome to the king, and the felons goods were forfeited to the King. The hundred charged with eſcape.

27.Aſſ.pl.27. Fitz.Cor.430. 21 One that hath committed petit larcenie is adiudged to be impriſoned by the ſpace of a moneth for his puniſhment, and then being kept in priſon after the moneth, he breaketh priſon, and eſcapeth; the keeper of the priſon ſhalbe
21.H.7.27. charged with this eſcape. But if one that is arraigned of felonie, be adiudged to be acquit, viz. that he ſhall be diſcharged, paying his fees: By this he ſhalbe Eſcape of one impriſoned for a time.

out of priſon touching the felonie, and the Gaoler ſhall not be charged, if he do eſcape: for the priſoner in the firſt caſe was by iudgement committed to priſon, and in the laſt, adiudged to be acquit of impriſonment, paying &c.

Where the towne, hundred, or countie ſhall be charged with eſcape.

22 If one be ſlaine in the day time in a towne, and the murderer eſcape without being taken, the towne ſhall be charged with the eſcape: And if the partie be killed out of any towne, then the Hundred ſhalbe charged therewith: Or if the towne be not ſufficient to anſwere the amerciament for the eſcape, then the Hundred ſhalbe charged therewith: And for the diſabilitie of the hundred, the whole countie ſhalbe charged with the eſcape. And the ſame law is of Abiuration, where the Church is in a field out of any towne. Fitz.Cor.238. 293. Fitz.Cor.425. 316.

The Gaoler will not receiue a priſoner.

23 If the Conſtable doe arreſt a felon, and carrie him to the Gaole of the ſame countie, and the Gaoler will not receiue him, the Conſtable ought not to let him goe, but the towne where the Conſtable dwelleth ſhal be charged with the keeping of him, vntill the next Gaole deliuerie. 10.H.47.

Priſoner by matter of record.

24 The law hath two ſeuerall reſpects to two ſorts of priſoners, whereof the one is priſoner by matter of Record, and the other by matter in deed. A priſoner by matter of Record is, when one that is preſent in Court, is committed to priſon by the Court. In this caſe, if the keeper of the priſon hath not this priſoner alwaies readie, when the Court will ſend for him, or elſe doe ſhew a reaſonable cauſe why he cannot haue him, the Court will iudge this an eſcape by the Keeper without further inquirie. But if the Keeper of the priſon be in this caſe examined by the court of his priſoner, and he will ſay nothing, the Court will adiudge it a voluntarie eſcape. Fitz.Cor.466. 29.H.6.33.

Eſcape by a towne.

25 If it be found in the Corroners Roll, that one did flie to the Church, and no abiuration is found in the ſame Roll: in this caſe, the court will adiudge an eſcape vpon the whole town without further preſentment. And if a man be apprehended for felonie in a towne, and carried towards the Gaole by certain of the ſame towne, & if he do reſiſt them, whereupon they do kill him: in this caſe it ſhalbe adiudged an eſcape vpon that town; for in that he was not ſafely carried to the Gaole, & attainted of felonie, the king doth loſe his eſcheats. Fitz.Cor.350.

A man killed being in carrying to the Gaole. Fitz.Cor.348.

Eſcape by the Shirife.

26 When the Veiners doe preſent that a felon is apprehended for felony, and deliuered to the Shirif, it will be adiudged an eſcape, if they do not declare to which Shirife he is deliuered, and name him, ſo that his rolls may be ſearched and ſeene, whether the priſoner came within the charge of the Shirife: and if it be not found, how he came out of the Shirifs ward, according to the law of the Realme, an eſcape ſhalbe adiudged vpon the Shirife. Fitz.Cor.345.

A Coroner ſent to the Marſhalſey to enquire &c.

27 It is vſed in the Kings Bench, to ſend a Coroner once or twice euery Term to the Marſhalſey, to ſee al the priſoners that be committed to the Marſhal by matter of Record: & if any of them be wanting, & cannot be found there, to ſet his name in a booke, & to informe the Iuſtices thereof: and then the Court will examin the Marſhall thereof, and if he cannot ſufficiently excuſe himſelfe, the Court will record eſcapes vpon him for euery of them. 39.H.6.33.

Confeſſing & auoiding of an Eſcape.

28 And touching thoſe which be priſoners of Record, the Keeper of the priſon cannot trauerſe the eſcape; but confeſſe, and auoyd it: as in alleadging that 21.Aſſ.p.12.

that the priſon was burnt, or broken by the Kings enemies: or by ſaying, that he which is ſuppoſed to be eſcaped, is not the ſame priſoner which was committed to him.

Priſoner by matter in fait bis. by arreſt.

29 Priſoner by matter in fait, is where one is priſoner by arreſt onely, whether it be by the Shirife, the Conſtable, or any other, and he doth eſcape: there the Eſcape ſhalbe preſented before he ſhall anſwere vnto it. And this preſentment ought to be before the Juſtices of the Kings Bench, the Juſtices in Eire, or ſome other Juſtices that haue authoritie to enquire thereof: As it appeareth by the Statute of Weſtminſter 1. the words whereof be theſe: It is

Before whom an eſcape ſhall be preſented.

St. 3 E. 1. c. 4. ordained, that nothing ſhall be demanded, nor taken, nor leuied by the ſhirife, nor by any other, for the eſcape of any theefe or felon, vntill it ſhall be adiudged by the Juſtices in Eire. And he that ſhall do otherwiſe, ſhall reſtore to him that paid it, ſo much as he hath receiued, and to the King as much. And likewiſe by the Statute of 31. Ed. 3. it is prouided, That the Eſcape of felons c. Clerks conuict, ſhalbe adiudged by the Juſtices, and by their view leuied. And though the foreſaid Statute of Weſtminſter 1. doth not make mention of any but of Juſtices in Eire, yet it doth alſo extend to the Juſtices of the Kings Bench: becauſe the Kings Bench is in Eire, and higher then an Eire, for if the Juſtices in Eire do ſit in a Countie, and the Juſtices of the Kings Bench come thither, the Eire ſhall ceaſe.

St. 31. Ed. 3. c. 14.

21. Aſſ. p. 12.

27. Aſſ. p. 1.

Ju. of peace and Coroner ſhall enquire of Eſcapes.

St. 1. R. 3. c. 3.

St. 3. H. 7. c. 1.

30 And by the Statute of 1. R. 3. Juſtices of Peace may enquire of all manner of Eſcapes, of euery perſon arreſted and impriſoned for felonie. And by the Statute of 3. H. 7. They may enquire of the eſcape of any that hath committed murder, and make certificat thereof into the Kings Bench. And alſo by the ſaid Statute of 3. H. 7. the Coroner vpon the view of the dead body, may enquire of the eſcape of the murderer: for if he doe commit the murder in the day, and eſcape, the towne ſhall be amerced. And alſo the Coroner ſhall deliuer his Inquiſition thereof to the Juſtices at the next Gaole deliuerie of the ſame Countie.

Trauerſe to a preſentment of an eſcape.

Pla. Cor. 391. 338. 346.

31 Vpon an eſcape, for the which no fine is to be paied, but an Amerciament, he or they which be charged therewith, ſhal haue no Trauerſe to the preſentment thereof: Quia de minimis non curat lex.

Eſcapes inquirable in Lætes and Turnes.

32 Although Eſcapes of felons be at this day inquirable in Lætes, and Shirifs Turnes, yet it ſhall not be leuied, vntill it be adiudged before the Juſtices: for that ſhould bee contrarie to the foreſaid Statute of Weſtminſter 1.

The penalties of eſcapes

33 The penaltie of him, which doth voluntarily ſuffer one arreſted for felonie to eſcape, is the forfeiture of all that he hath, becauſe it is felonie. The penaltie of him which doth ſuffer a negligent eſcape of a felon, is to pay a fine. The penaltie for the eſcape of him which was neuer arreſted, is but an amerciament. And if any doe ſuffer him that is attainted of felonie, negligently to eſcape, he ſhall pay to the King for a fine an hundred pounds. And if the partie eſcaping were but indicted, and not attainted, then he ſhall paie to the King for a fine a hundred ſhillings. If one which is not indicted, nor taken with the manner, nor apprehended at the ſuit of the partie, but onely taken by a ſtraunger for ſuſpition of felonie, do eſcape, there ſhall no penaltie nor puniſh-

42. Aſſ. pl. 5.

ment follow thereof. But yet if after the ſame eſcape, he that did eſcape, ſhalbe indicted of felonie, or make his abiuration, then he that ſuffered him to eſcape, ſhall pay a fine to the King. 44. Aſſ. p. 12. 42. Aſſ. p. 5. 43. E. 3. 36.

Where a man arreſted may be ſet at liberty, without further triall, where not.

14 If a man be arreſted of felonie by the Conſtable, or ſome other man, and after he that made the arreſt hath intelligence, that there is no ſuch felonie committed: in this caſe, he may ſet the partie arreſted at libertie, and hee ſhall not be charged with an eſcape: for there can be no felon where there is no felonie committed. But if a man be ſlaine, and one is arreſted for the ſame felony, or for the ſuſpition thereof, although that he who made the arreſt, doth after vnderſtand, that the partie arreſted, is not guiltie of that offence, or that the party was arreſted vpon malice, yet he may not ſet the partie arreſted at liberty, for he muſt be delinered by a courſe of law, and not by any mans diſcretion: for as the law hath taken knowledge that a man was arreſted of felonie, ſo muſt it take knowledge how he is diſcharged thereof. And the ſame law is, if a man be arreſted for any other felonie committed, and after ſet at libertie by the partie, that arreſted him, or any other &c. Kel. fol. 34. 44. Aſſ. p. 12.

Purſute

Purſute by Huy and Cry.

1

FOr the preuention of felons & felonies by watch and ward, and to the intent that they which ſhall commit any Homicides, Burglaries, Robberies, or other felonies may be apprehended, and iuſtified by the Law: Or if they eſcape, and flie away, that they may be purſued and taken by Huy and Crie, and committed to priſon: and to the end that due puniſhment may be inflicted vpon thoſe that do not purſue, or doe conceale, or not attach felons, a Statute was made at Weſtminſter Anno 3. Ed. 1. by the which it was ordained, That all men generally ſhalbe readie at the commandement and ſummons of the Shirifes, and at the crie of the Countrie to purſue and arreſt felons when neede ſhall be, as well within Fraunchiſes as without; & they that wil not, and thereof be attainted, ſhal make a grieuous fine to the King. And if default be found in the the Lord of a Franchiſe, the King ſhall ſeize the Fraunchiſe into his hands: And if default be in the bailife, he ſhall be one yeare impriſoned, and after make a grieuous fine: and if he haue not whereof, he ſhall haue two yeares impriſonment. And if the Shirife, Coroner, or any Bailife, within ſuch franchiſe or without, for reward or intreatie, or any affinitie, doe conceale, conſent or procure to conceale the felonies done in their liberties, or otherwiſe will not attach or arreſt ſuch felons (whereas they may) or otherwiſe will not doe their offices, for the fauour that they beare to ſuch offendors, and be thereof attainted, they ſhalbe one yeare impriſoned, and make a grieuous fine; and if they haue not whereof to make fine, they ſhall be three yeares impriſoned. And by a Braunch of an other Statute made the ſame Anno 3. Ed. 1. intituled Officium Coronatoris, it was enacted, That vpon all Homicides, Burglaries, men ſlaine, or put in great danger, huy and crie ſhall be leuied, and euery man ſhall follow the huy and crie, and the offendors fleps if it may be: and whoſoeuer doth not, and is thereupon conuicted, ſhall be attached to appeare before the Iuſtices of Gaole deliuerie.

St. 3. Ed. 1. 9. All men ſhall purſue the huy and crie.

Concealement or not attachment of felons

St. 3. Ed. 1.

2 After, by another Statute made at Wincheſter Anno 13. Ed. 1. it was prouided, That immediatly after any felonies and robberies be committed, freſh ſuit ſhall be made from towne to towne, and from countrie to countrie, and Enqueſts ſhall be taken, if need be, by him that is chiefe Lord of the town, and after in hundreds, franchiſes, and in the countie, & ſometime in two, three, or foure counties, in caſe where felonies be committed in the marches of the

St. 13. Ed. 1. 1. Freſhſuit and inquirie after felons.

Shire, ſo that offendors may be attainted, and ſuffer puniſhment. And if the Countrie will not anſwer for the bodies of ſuch offendors, the people dwelling in euery ſuch countrie ſhall anſwere for the robberies done, & the dammages: ſo that the whole hundred where the robberie ſhall be done, with the franchiſes which be within the ſame hundreds ſhall anſwere for the robberies done. And if the robberie be done in the diuiſion of two hundreds, then both the hundreds, together with the franchiſes within the precinct of them ſhall anſwere. And the countrie ſhall haue no longer time after the robberie and felonie committed, than halfe a yeare, within the which halfe yeare they muſt agree for the robberie, or elſe they ſhall be anſwerable for the bodies of the offendors. After, by a Statute made an 28.E.3.11. it is eſtabliſhed, That the countrie ſhal haue no longer terme after the robberie or felonie committed, than fourtie daies, within which it behoueth them to make gree of the robberie or offence, or that they anſwere the bodies of the offendors. And whereas the ſaid ſtat. of Wincheſter hath ordained, That immediately after any felonies and robberies be committed, freſh ſuit ſhall be made from towne to towne, and from countrie to countrie: Though the ſaid Stat. doth not make mention in what place, or at what time the robberie ſhall be done, for the which the countrie ſhall anſwer, if they doe not purſue and apprehend the felons: yet the ſages of the law reſpecting the reaſon and ground of that ſtat. doe reſolue, that the robberie which the countrie muſt anſwer for, is to be committed in an open place, which the countrey may take knowledge of by themſelues, without huy and cry, or other notice giuen to them: for if a man be robbed in his houſe in the night, or day, and the felons eſcape, the hundred where the houſe is ſhall not be charged therewith, for euery mans houſe is his caſtle, which he muſt defend at his owne perill, and if a man be robbed in his houſe it ſhalbe accounted his owne follie that he did defend it no better. And other men may not enter into that houſe for the ſafeguard thereof, as they may enter into the common field. And alſo the robberie which the countrie muſt anſwere for, is to be committed in the day time, and not in the night, viz. at ſuch times & ſeaſons as be méete for men to trauell in, and not at ſuch a time which is ordained for men to reſt in. And therefore if a man be robbed in the morning before day, the countrie ſhall not be charged therewith: but if it be during the day light, though the ſunne be ſet, the countrie ſhal be charged therewith: for whoſoeuer doth trauel during the day light, is in the guard and protection of the law: and if any doe iourney by night, he doth it at his owne perill.

The penaltie of the countrie if a felon be not taken.

St. 28. E. 3. 11.

Co. li. 7. 6.

The place & time of the robberie committed.

warding of walled townes

3 For the more ſuertie of the countrie, and ſpedyer detecting of offendors, by the ſaid Statute of Wincheſter it was enacted, That in great townes being walled, the gates ſhall be ſhut from the ſunne ſetting vntill the ſunne riſing: and no man ſhal lodge in the Suburbs, or any place out of the town, from nine of the clock vntill day, vnleſſe his Hoſt will anſwer for him. And the bailifs of townes, euery weeke, or at the leaſt euery fiftenth day, ſhall make enquirie of all perſons being lodged in the Suburbes, or in forraine places of the townes, and if they find any that hath receiued any ſuſpitious perſons, not keeping the Kings peace, the baylifes ſhall execute right and juſtice therein.

St. 13. Ed. 1. 4

when the night watch ſhall begin and end.

4 And by the ſaid ſtatute of Wincheſter it was moreouer ordained, That in all townes watch ſhall be kept, as in times paſt it hath béen vſed, That is to ſay, from the feaſt of the Aſcention vntill Michaelmas, in euery citie fiue men ſhall watch at euery gate, in euery Borough twelue men, in euery towne fiue

St. 13. Ed. 1. 4

ſire or foure, according to the number of the Inhabitants of the Towne, and they ſhall watch the towne at night from the Sunne ſetting to the Sunne riſing. And if anie ſtranger doe paſſe by them, hee ſhall bee arreſted vntill the morning, and if no ſuſpition be found, he ſhall goe quit: and if they find cauſe of ſuſpition, they ſhall forthwith deliuer him to the Sherife, and the Sherife ſhall receiue him without hurt, vntill hee be acquited in due manner. And if hee will not obey the arreſt, they ſhall leuie huy and crie vpon him, and ſuch as keepe the Towne, ſhall follow with huy and crie with all the Towne and Townes neere, and from Towne to Towne, vntill hee be taken and deliuered to the Sherife, as is beforeſaid, and for the arreſtments of ſuch ſtraungers none ſhall be puniſhed. And by the Statute of Anno 5. H. 4. Juſtices of peace haue power to make inquiſition in their Seſſions from time to time, and to puniſh them which be found in default, after the tenour of the foreſaid Statute of Wincheſter. Reſiſting of arreſt. Sta. 5. H. 4. 3

5 And for the more ſpeedie apprehenſion of felons, and that they may haue the leſſe meanes to eſcape, when they haue robbed, or otherwiſe offended, by the ſaid Statute of Wincheſter it is further eſtabliſhed, That the highwaies leading from one Market Towne to another ſhall be enlarged there where any wood, hedges, or ditches be, ſo that there ſhall be no ditch, wood, or buſh where he that doth lewdly may eſcape, within two hundred foote of the highway on the one ſide, and two hundred foot on the other (but this Statute extendeth not to Aſhes or great Trees.) And if anie robberies be done by default of breaking downe ditches, vnderwood, and buſhes, the Lord ſhall anſwere therefore: and if it be a murder, the Lord ſhall be puniſhed at the Kings pleaſure. And if the Lord be not able to cut downe the vnderwood, the Countrie ſhall helpe him. And within the Kings demeſne woods in forreſts, and without, the waies ſhall be enlarged as before is ſaid. And if anie Parke be neere vnto the highway, the Lord thereof ſhall diminiſh it by the ſpace of two hundred foote from the highway, or elſe make ſuch a wall, ditch, or hedge, that offendors cannot goe forward or backeward to any hurt. Enlarging of highwayes. Sta. 13. R. 1. 5

6 Becauſe it is very hard, and extreame to many perſons, for that by the foreſaid Statutes of 13. Edw. 1. and 28. Edw. 3. 11. they doe remaine charged with the penalties therein contained, notwithſtanding their vnabilitie to ſatiſfie the ſame, and though they do as much as in reaſon might be required in purſuing ſuch malefactors and offendors, whereby both large ſcope of negligence is giuen to the Inhabitants and Reſiants in other hundreds and counties, not to proſecute the huy and crie made, followed, and brought vnto them, by reaſon they are not chargeable for anie portion of the goodes robbed, nor with any dammages in that behalfe giuen: and alſo great incouragement and imboldening is likewiſe giuen to the offendors to commit daily more felonies and robberies, ſeeing it is in a maner impoſſible for the Inhabitants and Reſiants of the ſaide hundred and franchiſe wherein the robberie is committed to apprehend them, without the ayde of other Hundreds and Counties adioyning. And for that alſo the partie robbed hauing remedie by the foreſaid Statutes for the recouering of his goods robbed & dammages againſt the hundred wherein the robberie was committed, is many times negligent and careleſſe in proſecuting and purſuing the ſaide malefactors and offendors. For the qualifying of all which extreamities by a ſtatute made Anno 27. Eliz. it was ordained, That the Inhabitants and Reſiants of euery, or anie ſuch hundred (with The hundred charged where freſh ſuite ſhall ceaſe. Stat. 27. El. 13

(with the franchiſes within the precinct thereof) wherein negligence, fault, or defect of purſute and freſh ſute after huy and crie made ſhall happen to be, ſhall anſwer and ſatiſfie the one moitie or halfe of all and euerie ſumme and ſummes of money and dammages, as ſhall by force and vertue of the ſaide Statutes (viz. of 13.Edw.1. and 28.Edw.3.) or either of them be recouered or had againſt, or of the ſame Hundred, with the franchiſes therein, in which any robberie or felonie ſhall at any time hereafter be committed or done. And the ſame moitie ſhall and may at any time hereafter be recouered by action of Debt, Bill, Plaint, or Information in any of the Quenes Courts of Record at Weſtminſter, by, and in the name of the Clarke of the Peace for the time being, of, or in euerie ſuch Countie within this Realme where anie ſuch robberie and recouerie by the partie or parties robbed ſhall be, without naming the Chriſtian name or the ſurname of the ſaide Clarke of the Peace. Which moitie ſo recouered, ſhall be to the onely vſe and behoofe of the Inhabitants of the ſaid Hundred, where anie ſuch robberie or felonie ſhall be committed or done.

The Clarke of the Peace ſhall proſecute the ſute.

The Clarke of the Peace doth die, or is removed.

7 If any Clarke of the Peace, of, or in any Countie within this Realme, ſhall at any time hereafter commence, or preferre any ſuch ſute, action, or information, and ſhall after the ſame ſo ſued, commenced, or preferred, happen to die, or to be removed out of his office before recouerie and execution had, yet no ſuch action, ſute, bill, plaint, or information ſued, commenced, or preferred, ſhall by ſuch diſplacing, or death, be abated, diſcontinued, or ended. But it ſhall and may be lawfull, to, and for the Clarke for the Peace next ſucceeding in the ſaide Countie, to proſecute, purſue, and follow all, and euerie ſuch action, bill, plaint, ſute, and information for the cauſes aforeſaid, ſo hanging, and depending, in ſuch manner and forme, to all intents and purpoſes, as that Clarke of the Peace might haue done, which firſt commenced or preferred the ſaid ſute, bill, plaint, or information. 2 Ed. 17. Eli. 13

8 Although the whole Hundred where ſuch robberies and felonies are committed, with the liberties within the precincts thereof, are by the ſaid two former ſtatutes charged with the anſwering to the party robbed his dammages, yet neuertheleſſe the recouerie and execution, by, and for the party or parties robbed, is had againſt one or a very few perſons of the ſaide inhabitants, and he and they ſo charged, haue not heretofore by Lawe had anie meane or way to haue anie contribution, of, or from the reſidue of the ſaide Hundred where the ſaide robberie is committed, to the great impoueriſhment of them againſt whom ſuch recouerie or execution is had: for the remedie whereof by the ſaid ſtatute of Anno 27. Eliz. it was enacted, That after execution of dammages by the partie or parties ſo robbed had, it ſhall and may be lawfull (vpon complaint made by the partie or parties ſo charged) to, and for two Juſtices of the Peace, whereof one to be of the Quorum, of the ſame Countie, inhabiting within the ſaid Hundred, or neere vnto the ſame, where any ſuch execution ſhall be had, to aſſeſſe and tare ratably, and proportionably, according to their diſcretions, all and euery the Townes, Pariſhes, Villages, and Hamlets, as well of the ſaide Hundred where anie ſuch robberies ſhall be committed, as of the Liberties within the ſaide Hundred, to, and towards an equall contribution to be had and made for the reliefe of the ſaide Inhabitant or Inhabitants, againſt whom the partie or parties robbed before that time had his or their execution. And that after ſuch taxation made, the Conſtables, 2 Ed. 27. Eli. 13

A remedie for an equall contribution.

Conſtables, Conſtable, Headboroughs, or Headborough of euerie ſuch Towne, Parith, Village, and Hamlet, ſhall by vertue of this Act haue full power and authoritie within their ſeuerall limites, ratably and proportionably, to tare and aſſeſſe according to their abilities, euerie inhabitant and dweller in euerie ſuch Towne, Parith, Village, and Hamlet, for, and towardes the payment of ſuch taration and aſſeſſement, as ſhall be ſo made vpon euery ſuch Towne, Parith, Village, and Hamlet, as aforeſaide, by the ſaide Juſtices. And if anie Inhabitant of anie ſuch Towne, Parith, Village, or Hamlet, ſhall obſtinately refuſe and deny to pay the ſaid Taration and aſſeſſement ſo by the ſaide Conſtables, Conſtable, Headboroughs or Headborough tared and aſſeſſed: then it ſhall and may be lawfull, to, and for the ſaid Conſtables, and Headboroughs, and euerie of them within their ſeuerall limites and iuriſdictions, to diſtraine all and euerie perſon and perſons ſo refuſing and denying, by his and their goods and chattels, and the ſame diſtreſſe to ſell, and the money thereof comming to retaine to the vſe aforeſaide. And if the goodes or chattells ſo diſtrained and ſold, ſhalbe of more value, than the ſaid Taration ſhall come vnto, then the reſidue of the ſaid money ouer and aboue the ſaid Taration, ſhal be deliuered vnto the ſaide perſon or perſons ſo diſtrained.

Stat. 27. Eli. 13

9 All and euery the ſaid Conſtables and Headboroughs, after that they haue within their ſeuerall limites and iuriſdictions leuied and collected their ſaid rates and ſummes of mony ſo tared, ſhall within ten daies after ſuch collection, pay and deliuer the ſame ouer vnto the ſaid Juſtices of Peace, or one of them, to the vſe and behoofe of the ſaid Inhabitant or Inhabitants, for whom ſuch rate, taration, or aſſeſſement ſhall be had or made, as aforeſaide: Which money ſo paied, ſhall by the Juſtices or Juſtice ſo receiuing the ſame, be deliuered ouer (vpon requeſt made) vnto the ſaide Inhabitant or Inhabitants, to whoſe vſe the ſame ſhall be collected. Deliuering the contribute money.

Stat. 27. Eli. 13

10 And the like taration, aſſeſſement, leuying by diſtreſſe, and payment, as aforeſaide, ſhall be had and done within euerie hundred where default or negligence of purſute and freſh ſute ſhall be, for, and to the benefite of all and euery Inhabitant or Inhabitants of the ſame hundred, where ſuch default ſhall be, that ſhall at any time hereafter by vertue of this Act, haue any dammages or mony leuied of them, for, or to the paiment of the one moity or halfe of the money recouered againſt the ſaid hundred, where any robberie ſhall bee hereafter committed. Leuying of contribution.

Stat. 27. Eli. 13

11 Prouided, that where any robberie is, or ſhal be hereafter committed by two or a greater number of malefactors, and that it happen anie one of the ſaide offenders to be apprehended by purſute to be made according to the ſaide former mentioned Lawes and Statutes, according to this preſent Act, that then, and in ſuch caſe, no hundred or franchiſe ſhall in anie wiſe incurre, or fall into the penalite, loſſe, or forfeiture mentioned either in this preſent Act, or in anie the ſaid former ſtatutes, although the reſidue of the ſaid malefactors ſhall happen to eſcape, and not to be apprehended: Anie thing in this Statute, or in the ſaid former Statutes to the contrarie notwithſtanding. Which ſaide Co. lib. 7. fol. 7 Braunch doth in ſome ſort qualifie part of the foreſaid ſtatute of Wincheſter: for by the ſaid Statute, the Countrie muſt agree for the ſaide robberie within halfe a yeare, or elſe they ſhall be anſwerable for the bodies of the ſaide offenders, No penalty where anie of the offenders be apprehended.

doʒs, which is of all the offendoʒs. But by this ſtatute it is ſufficient if they take any of the offendoʒs, although not all.

Within what time the ſute ſhall be commenced.

12 Pʒouided alſo, That no perſon oʒ perſons hereafter robbed ſhall take any benefit by vertue of any the ſaid former Statutes to charge any Hundʒed where any ſuch robberie ſhall be committed, except he oʒ they ſo robbed ſhall commence his oʒ their ſute oʒ action, within one yeare next after ſuch robberie ſo to be committed. 27. Eli. 13

In what maner huy and crie ſhall be made.

13 No huy and crie, oʒ purſute hereafter to be done oʒ made by the countrey, oʒ inhabitants of any Hundʒed ſhall be allowed and taken to be a lawful huy and crie, oʒ purſute, vpon, oʒ after any of the ſaid felons, oʒ offendoʒs, except the ſame huy and crie and purſute be done and made by horſemen and footmen: Any vſage, oʒ cuſtome to the contrary notwithſtanding. 27. Eli. 13

Notice muſt be giuen of the robberie.

14 No perſon oʒ perſons that ſhall hereafter happen to be robbed, ſhall haue oʒ maintaine anie Action, oʒ take any benefite by vertue of the ſaid two mentioned Statutes, oʒ either of them, except the ſaid perſon oʒ perſons ſo robbed, ſhall with as much conuenient ſpeede as may be, giue notice and intelligence of the ſame felonie oʒ robberie ſo committed vnto ſome of the inhabitants of ſome Towne, Village, oʒ Hamlet neere vnto the place where anie ſuch robberie ſhall be committed: Noʒ ſhall bring oʒ haue anie Action vpon, oʒ by vertue of anie the Statutes afoʒeſaide, except he oʒ they ſhall firſt within twentie dayes next before ſuch Action to be brought, bee examined vpon his oʒ their coʒporall Oathe to be taken before ſome one Juſtice of the Peace of the Countie where the robberie was committed, inhabiting within the ſaide Hundʒed where the robberie was committed, oʒ neere vnto the ſame, whether hee oʒ they doe know the parties that committed the ſaid robberie, oʒ anie of them. And if vpon ſuch examination it be confeſſed, that he oʒ they do know the parties that committed the ſaid robberie, oʒ any of them, then he oʒ they ſo confeſſing, ſhall before the ſaide Action be commenced, oʒ brought, enter into ſufficient bond by Recognizance before the ſaid Juſtice, before whome the ſaide Examination is had, effectually to proſecute the ſame perſon and perſons ſo knowne to haue committed the ſaide Robberie by Indictment, oʒ otherwiſe, accoʒding to the due courſe of the Lawes of this Realme. 27. Eli. 13

The partie robbed examined and bound to proſecute the offendoʒs.

A remedy for the inhabitãts of Wenherſt in Barkſhire.

15 Becauſe the inhabitants of the Hundʒed of Wenherſt in the Countie of Berke conſiſting onely vpon fiue ſmall villages, and thʒee hamlets, and hauing in it two great coade waies of thʒee miles in length at the leaſt, thʒough the Thicket, haue beene ouercharged by ſeuerall Bʒaunches of the ſaid Statute of Anno 27. Elizab. 13. In reformation thereof, by a Statute made Anno 39. Elizab. it was enacted, That the inhabitants of the Hundʒed of Wenherſt, alias Weinerth, within the Countie of Berke, ſhall and may to their owne pʒoper vſe, in the name of the Clerke of the Peace of the ſaide Countie of Berke, recouer, haue, and leuie all ſuch ſummes of money, coſts, and damages as hereafter ſhall be recouered, oʒ leuied, of, oʒ againſt them by the foʒeſaide Statutes, oʒ any of them, againſt the inhabitants and reſiants of euery, oʒ any ſuch Hundʒed, with the franchiſes within the pʒecincts thereof, wherein negligence, fault, oʒ defect of ſuch purſute, and freſh ſute (as by the ſaid Statute of 27. Elizab. is appointed to be made) ſhall happen to be, after 39. Eli. 25

notice

notice giuen, or huy and crie brought to the ſaid inhabitants or reſiants, or any of them, of, or vpon any robberies which ſhalbe at anie time hereafter done within the ſaid Hundred of Weinerth. And this preſent Act ſhall giue as full power and authoritie in all reſpects to the inhabitants of the ſaid Hundred of Wenherſt (in the name of the Clarke of the Peace of the ſaid County) for recouery, hauing, and leuying of all the ſaid mony, coſts, and dammages as aforeſaid, as the aforeſaid ſtatute of 27. Eli. gaue or intended to giue for the recouerie of a moitie, or one halfe thereof. Prouided alwayes, that no ſuch remedie, or recouerie ſhalbe had by this ſtatute, for all, or the whole ſumme or ſummes of mony, and dammages aforeſaid, but only in theſe two Caſes, viz. The one, where no ſuch notice or intelligence (as by the ſaid ſtatute of 27. Eliz. was appointed to be giuen of euery, or any robbery) ſhalbe giuen to the inhabitants of the ſaid hundred of Wenherſt alias Weinerth: The other where the inhabitants of the ſame Hundred (after ſuch notice of any robbery to them, or ſome of them giuen, or after huy and crie for the ſame to them brought) ſhall make, or cauſe to be made freſh ſute, and purſute after the offenders with horſemen and footmen, according to the ſaid ſtatute of 27. Eliz. and where nenertheleſſe the offenders, or anie, or one of them ſhall not be apprehended within fortie daies after the robbery committed.

In what caſes only the recouery ſhal be had.

P. 24. El. Dy. 370. 16 Two ioynt owners of a ſumme of money, which were robbed by felons vnknowne at A. in the Hundred of B. in the countie of C. brought their action againſt the inhabitants of the ſaid hundred of B. and declared, that whereas huy & crie was leuied by them, and notice there giuen, and the felons were not apprehended, nor deſcried, nor amends made within the ſix moneths, according to the ſtatute of Wincheſter: whereunto the defendants, viz. the inhabitants of the ſaid hundred of B. pleaded in barre of the action, that immediately vpon the huy and crie leuied, they made freſh ſute from the ſaid towne of A. where the robbery was committed thorow their other townes vnto the towne of D. which is next adioyning to the ſaid Hundred, and there huy and crie was giuen to the inhabitants of the ſaid hundred. But this maner of purſute was adiudged no excuſe, according to the meaning of the ſaid ſtatute of Wincheſter, without apprehending, or anſwering of the robbers, or deſcrying of their names, that they might be indicted and outlawed. And in this caſe the plaintifes may ioyne in action, becauſe they were ioynt owners of the money: But if the ſummes of money had beene ſeuerall, and they had ſeuerall properties in them, they would not haue ioyned in Action.

Purſute will not ſerue with out apprehenſion of the felons, or deſcrying them.

24 Ed 3. 39 17 If a man be driuing of cattell, and be purſued by huy and crie, the ſheriffes bailife, or any other, may arreſt him and the cattel ſuppoſed to be ſtolne, and commit them to the towne where they be apprehended to anſwer to the king, according to the law, though the man arreſted be not of euill name, ſuſpicious, nor a ſtranger in thoſe parts, nor indicted. For the law doth giue that credite to huy and crie, that euerie man is a ſufficient bailife and officer to apprehend him that is purſued by huy and crie, and taken with the thing ſuppoſed to be ſtolne. And therefore if one man doe leuie huy and crie vpon another without cauſe, both the one party and the other ſhalbe attached to anſwer it, as diſturbers of the peace.

Arreſting of him that is purſued by huy and crie.

Appeales.

Appeales.

WHen a murder, manſlaughter, rape, burglarie, robberie, or other felonie is committed, and that the offendor (be he principall or acceſſorie) is apprehended by hue and crie, or by any other meanes, and ſo by impriſonment or mainprize brought to his anſwer: or otherwiſe if he flie and eſcape, when he is ſo diſcouered and knowne that Proceſſe may be awarded againſt him by name, to take him, and bring him into the Kings court to his anſwer: Then either the partie moſt intereſſed or grieued by the ſame murder or felonie, is to proſecute ſuit againſt the ſaid offendor by Appeale, and thereby to ſeek reuenge againſt him for the wrong done to himſelfe, or his anceſtor; or elſe the offendor is to be indited at the kings ſute, whoſe peace he hath broken, and whoſe law he hath offended, and who hath a ſpeciall intereſt in all manner of treaſons and felonies to puniſh them, to weed them out of his kingdomes and dominions, and to defend his ſubiects from them. And therefore I am to expreſſe in this Chapter, and the nert, what an Appeale of felonie is, and what an Indictment is, by whom, for whom, and againſt whom, and in what caſes they are to be begun, proſecuted, and maintained, what defences or pleas are to be made or pleaded by the ſuppoſed offendors vnto them, and what counterpleas may be obiected againſt the ſame plees. An Appeale is a plaint of one perſon made againſt another, with an intent to attaint him of felonie, by a courſe of law prouided therefore; which appeale may be brought againſt a woman couert without her huſband, againſt an infant, and all others that can commit felonie: and a woman may haue an Appeale for the death of her huſband (becauſe the huſband and wife be one fleſh) but of the death of none other, by force of the ſtatute of Magna Charta, which hath ordained, That none ſhalbe taken, or impriſoned by the appeale of any woman for the death of any other, than of her huſband. And therefore if a woman doe bring an appeale of the death of her father, and the defendant would admit it, yet the Court will abate it, becauſe it is contrary to the ſaid ſtatute.

Appeale of death.

Appeale by a woman of the death of her huſband.

St 9.H.3.34.

10.Ed.4.7. Plo.com.f.85

2 As a woman ſhall haue no Appeale of the death of anie other, but of her huſband: No more ſhall anie coſin of him that was ſlaine, who maketh his conueiance in hanced by a woman, haue any appeale of the death of him that is killed; notwithſtanding he be iſſue male, and not female; and notwithſtanding

Appelāt conueieth his title by a woman.

20 H.6.46. Fitz.Cor.285. 17.Ed.4.1. standing that the woman by whom he maketh his conueyance, died in the life time of him, of whols death the appeale is commenced. As if a man haue issue one onely daughter, who marrieth a husband, hath issue a son, and dieth, and after the father of that woman is slaine. In this case the sonne of the woman shall not haue an appeale of the death of his saide grandfather, though hee be his next heire at the common Law, and inheritable to his land; because his mother was forecloſed of it by the foresaide Statute of Magna Charta, and so likewise he which hath none other title thereunto, but that which he deriueth from his said mother. But if he that was slaine, haue none heire on the fathers side, then the vncle or next of kinne by mothers side, shall haue the appeale, yea though he do conuey his title thereunto by a woman.

Fitz.Cor 384. 17.Ed.4.1.

3 By the auncient Lawe of this Realme, a woman could not haue an appeale of the death of her husband, vnleſſe her said husband were slaine betweene her armes, within the yere and day before: Neither could shee, or any other haue an appeale, vnleſſe shee or hee were present at the death of the partie slaine, and see it. But that Lawe was altered by the Statute of Glouceſter, whereby it was ordained, That no appeale shall bee abated, so some as they haue beene heretofore: But if the appellant in an appeale doe declare the deede, the yeare, the day, the houre, the time of the King, and the Towne where the deede was done, and with what weapon hee was slaine, the appeale shall stand in effect. And the appeale shall not bee abated for default of fresh sute, where a man doth sue within the yeare, and the day, after the deede done.

6.Ed.1.9.

The declaration in appeals of murder.

50.Ed.3.15. 28.Ed.3.91. 27.Ass p.3.

4 If a woman will haue an appeale of the death of her husband, it is requiſite, that she be not only his wife in deede, viz. de facto, but also lawfully, & in right, viz. de iure: for neuer accoupled in lawfull marriage, is a good plea, to bar her of her appeale. And it shalbe tried by the Bishop, whether she be his lawfull wife, or not.

The woman must be the deads lawfull wife.

20.H.6.46. 12.El.Dyer. 296.

5 It is requiſite, that a woman who will maintaine an appeale of the death of her husband, shall liue sole and vnmarried: for by her second marriage, her appeale is extinct, though her second husband do die, within a yeare and day after the death of her first husband. And if a woman do bring an appeale of the death of her husband, & hanging the Writ, shee doth marry an other husband, her appeale shall abate for euer.

The woman must liue vnmarried.

21.H.4.46.

6 If a woman do bring an appeale of the death of her husband, and do pursue the Defendant vntill Iudgement: And then after Iudgement, and before execution, she marieth an other husband: In this case, she shall not obtaine execution, viz. the Defendant shall not be hanged at her sute: for shee hath willingly loſt the name of her first husband, before she hath obtained the effect of her sute, and the reuenge which shee brought her appeale for.

A woman marrieth betweene iudgement and execution.

27.Ass.p.41. 35.H.6.58.

7 There be some Cases, where a woman shal haue an appeale of the death of her husband, though shee be not endowable of the poſſeſſion of the same husband: As where her husband is attainted of Treason, and after one doth kill him, his wife shall haue an appeale, and yet she shall haue no dower. And in like sort, if a woman doe elope from her husband, and after one doth kill him, she may maintaine an appeale againſt the offendor, but no writ of Dower a-

Where appeale lieth, but no dower.

gainſt his heire. And many other Caſes there be, where a man was ſo ſeiſed of his lands, that his wife is not therof endowable by the law: And if he be ſlaine ſhe may maintaine an appeale againſt the manqueller.

Where the wife may haue appeale, none other ſhall.

8 Where a woman may haue an appeale of the death of her huſband, none other ſhall haue it during her life, nor after her death, though the wife do die within the yeare and day after the death of her huſband, and before the appeale commenced; for that the appeale was once out of the blood, it ſhall not bee reſtored to his blood againe. 20.H.6.47. Kel.fol.120.

The huſband killed by his wife.

If the huſband be killed by his wife, his ſon ſhall haue an appeale. And yet if in that caſe the K. do pardon the wife all treaſons, the ſon ſhalbe barred of his appeale. 33.H.8. Dyer 50. 18.Ed.4.1.

Appeale of death by the heire.

9 If he that was ſlaine, had no wife liuing, at the time he was killed, then his next heire by the common Law, if he be male, ſhall haue the appeale, But if he which bringeth the appeale be the next heire male to him that was ſlaine, yet if there be another liuing, which is his heire by the common Law, though not his heire male, his appeale ſhall abate. As if he that was ſlaine had iſſue a daughter, and no ſon, his brother cannot maintaine an appeale againſt the offendor, though he be his next heire male, becauſe hee is not next heire by the common law, to him that was ſlaine, but his daughter is. And by the ſame reaſon, a Baſtard, nor the yongeſt ſon, which doth inherite lands in Borough Engliſh, ſhal not maintaine an appeale, becauſe neither of them is heire by the common Law. 27 Aſſ.p.25. Fitz.Cor.384

A Baſtard. Heire in Borough Engliſh.

It was a cuſtome in olde time, if one were found guilty in an appeale of murder, that his wife, and all the neareſt of his kinne, which was murdered, ſhould draw the felon who committed the murder, by a long rope, to the place of execution.

The maner of a murderers death.

11.H.4 11. Plo.com.306

An appeale dieth with the Appellant, or by his nonſuit &c.

10 This appeale of the death of the auncеſtor is ſo tied and affixed to the next heire male at the Common Lawe of him that was ſlaine, that if it bee once attached by him, although that hee die, hanging the ſuite, or bee notſuite therein, or doe diſcontinue the ſuite, and that within the yeere, yet the appeale is extinct for euer: becauſe it is but a perſonall action, and not auncеſtrell, (for hee that was ſlaine could not haue maintayned it:) and therefore beeing but perſonall, it doth die with the perſon of the appellant. But it is otherwiſe, if the appeale were not attached by the heire, during his life, but that he died before he brought his appeale, or died in the life of his auncеſtor that was killed: In that caſe, he which is next heire male liuing, ſhall haue the appeale. 38.H.6.13. 9.H.7.5. 16.H.7.15. 11.H.4 11. 20.H.6.46.

The heire doth releaſe, and die.

11 If the eldeſt ſonne, before the appeale commenced, and within the yeare, doth releaſe the appeale, and then dieth, the ſecond ſonne and euerie other which claimeth as heire to the partie ſlaine, ſhall bee barred thereby. 9 H.7.5. Stamf. fol.59.

Recouery and death before execution.

12 If the eldeſt ſon do bring an appeale, and hath iudgement, and before execution of the offendor dieth, his heire ſhall not haue execution: for if he ſhould, he is to haue it as heire to him that recouered, & not as heire to the party ſlaine: which cannot be, for hee that demaundeth reuenge of his auncеſtors death, muſt make himſelfe immediate heire to the ſame auncеſtor which was ſlaine, or otherwiſe his ſute ſhall not be allowed, which the heire of the eldeſt ſonne in this caſe cannot doe. 16.H.7.15. 38.H.6.13.

13 If

13 If the eldeſt ſonne, after the title of appeale accrued vnto him, or during the life of his auncеſtor that was ſlaine, doe diſable himſelfe by attainder of felonie, or by being a Monke, a Prieſt, or mayhemed by the Defendant, or by any other cauſe: So that by ſuch diſabilitie he cannot haue an appeale, yet the ſecond ſonne ſhall not haue it. The eldeſt ſon diſabling himſelfe. Fitz. Cor. 335. 322.

14 If the eldeſt ſon doth kill his father, or his mother, the ſecond ſon ſhall haue an appeale againſt him. And if there be three brethren, & the middleмoſt killeth the elder brother, the yongeſt brother ſhal haue an appeale againſt him: And yet in the foreſaid caſes, he that bringeth the appeale, is not heire to him that is ſlaine. And if the huſband do kill his wife, his ſon ſhall haue an appeale againſt him. Killing father mother, brother, or wife. Fitz. Cor. 459. 18 Ed. 4. 1. 33. H. 8. Dyer 50.

15 If the Lord do kill his Villaine, the heire of him that was ſlaine, may haue an appeale againſt his Lord, notwithſtanding that the Plaintife in the appeale is villaine to the Defendant: for the villaines heire doth not ſue for the recouerie of lands, goods, or liberty from the Lord, but only for a lawful reuenge of his auncеſters death. And if the villaines heire ſhould not haue an appeale in this caſe, the ſaid offence ſhould remaine vnpuniſhed by appeale: for none other may purſue it. The Lord killeth his villaine. 2. H. 4 6. Littl. vill.

16 An Infant within the age of twenty and one yeares, may haue an appeale of the death of his anceſtor, (and in like ſort he may haue any manner of appeale:) But notwithſtanding, the plea ſhall remaine to be tried, vntill hee come to his full age of one and twentie yeares, for that in this caſe the Defendant cannot wage battell againſt him: Attamen quære. An Infant. 42 Aſſ. p. 14. 45 Ed. 3. 25. 27. Ed. 3. 83. Kel. fol. 120. 32. Aſſ. p. 8.

17 A man of the age of three ſcore and tenne yeares may haue an appeale of the death of his auncеſtor, (and in like ſort may haue any manner of appeale:) and yet being of that age, hee ſhall put the Defendant from waging of battell with him. A man of 70. yeares of age. Fitz. Cor. 385.

18 If the Plaintife which ought to ſue the appeale be attainted of treaſon, or felonie, or a Monke, or a Prieſt, or mayhemed by the Defendant, he ſhall not haue an appeale. Diſabilities to bring an appeale. Fitz. Cor. 313

19 A man that is not of perfect memorie, or that is deafe and dumbe, or a Lazar, or a fole naturall, ſhall not haue an appeale of death, nor any other appeale. For battell cannot be waged againſt any of them, eueric of them being vnperfect to performe the ſame. Diſabilities in the appellant. Britton.

20 If one brother doe bring an Appeale of the death of his auncеſtor, it is no plea for the appellé to ſay, that the ſayd auncеſtor, at the time of his death, and after the Writ purchaſed, had an elder brother named B. to whom the appeale is giuen, and not to him that is plaintife: for it may bee, that the ſame B. was his brother of the halfe bloud. And therefore the ſureſt way is to begin his plea with the father of him that was ſlaine, as to ſay, that ſuch a man tooke to his wife ſuch a woman, and had iſſue betweene them B. their eldeſt ſonne, and, and he which was ſlaine their ſecond ſonne, and the appellant their yongeſt ſon, and that he which was ſlaine died, liuing B. their eldeſt ſonne. Pleading that the appellant hath an elder brother. 7. Ed. 4. 15.

The appellat in appeale of death may sue by attorney.

21 For that by the common Law, he that will sue an appeale, must sue it in proper person, which suit is long, and costly, and maketh the partie appellant wearie to sue: For the reformation whereof it was ordained by the Statute of An 3 H.7. That the Appellant in any appeale of murder, or death of a man (where battaile by the course of the common Law lieth not;) may make his atturney, and appeare by the same, in the said appeale, after it is commenced, to the end and Execution of the same. 3.H.7.1.

Who shall maintaine an appeale of robberie.

A Carrier.

22 As concerning an appeale of Robberie, who shall maintaine it, and for what causes, it is to be obserued, That he from whom the goods be taken, may haue the same appeale: As the Seruant shall haue an appeale of Robberie, if the goods of his Maister be taken out of his custodie and possession, and yet hee had only the possession, but no propertie in the goods robbed. And so it is, if a Stranger bee commanded to carrie another mans goods, and as he is in carrying of them, hee is robbed of them, and they taken from him: In this case the same Straunger may haue an appeale of Robberie against those Robbers, because he standeth charged to him, who commaunded him to carrie the same goods. Fitz.Cor.100. 2.Ed.4.15.

A woman. An Infant. Executors.

23 A woman may haue an appeale of robberie: and so may an infant: likewise Executors may haue an appeale of Robberie, of a Robberie of the Testators goods done to themselues, but not done to their Testator: for if a man bee robbed, and after maketh his Executors, and die, the Executors shal not haue an appeale of Robberie; for an appeale, being a personall action, dieth with the partie, and shall not accrew to his Executors. Fitz.Cor.357.

Lord. Villaine.

24 A Villaine shall not haue an appeale of robberie, against his Lord, for any goods robbed, or taken from him by his said Lord: Because all the goods of the Villaine be the Lords at his pleasure. Fitz.Cor.17.

Appeale for the King or Queene.

Stealing the goods of a man attainted of treason.

25 One may haue an appeale of robberie for the King, or the Queene; as of any iewelles, plate, or other goods of the Kings or Queenes robbed or taken from him. And a man may be indicted of felonie, for the stealing of goods of an other, that was attainted of Treason, which goods by the said attainder were forfeited to the King. 17.Ed.3.13. 11.H.4.40.

An appeale of robbery done to an other.

26 There bee some Cases where one may haue an appeale of robberie, though the robberie was not done to him, but to another: as if there be two marchants, or other tradsemen, that do merchandize, or occupie their goods in common, & one of them is robbed, and slaine: In this case, the other merchant or tradsman, may haue an appeale of robberie against the Robbers. And in like sort, if one doe steale my goods from me, and another doth steale them from him: In this case I may haue an appeale against the second felon, because by the first taking, the propertie was not out of me, for a felon doth not claime any propertie in the thing stolen; in such sort as he doth, who taketh a thing as a trespasso. Fitz.Cor.393 4.H.7.5. 13.Ed.4.3.

Appeale of rape.

27 Touching an appeale of rape, and who by the Law shall maintaine the same, it is to be noted, That if a woman sole be rauished, shee may haue an appeale of rape. But if a woman married be rauished, she cannot haue an appeale without her husband. 8.H.4.21.

28 If

28 If a woman couert be rauished, and after shée doth consent to the rauisher, her husband only shall haue an appeale of rape, by the Statute of Ann 6. R.2. the words whereof be these: It is ordained, that whersoeuer, and whensoeuer any Ladies, Noble mens daughters, or other women, be rauished, and after the same rape committed, doe consent to the rauishers, as well the rauishers, as they that be rauished, and euerie of them, shalbe disabled, and be disabled ipso facto to haue or challenge all manner of inheritance, dower, or ioint feoffment after the death of their husbands, and auncestors. And the husbands of such women (if they haue husbands) or if they haue no husbands liuing, then their Fathers, or other their next kinsmen in blood, shall haue the suit to prosecute, and may pursue against the same offendors, and rauishers in this behalfe; and to conuict them of felony, though the same woman after the rape, doe consent to the Rauishers. And in this case the Defendant shall not wage battell, but the truth of the matter shall bée tried by the Countrie. S. Felonies by Statute 4.

St.6.R.2.6.

An appeale where a woman rauished consenteth.

29 The words of this Statute be: That the husbands of such women &c. which is to be intended, other lawful husband, that is to say, that her husband in right and possession, shall haue the appeale: for neuer accoupled in lawfull marriage, is a good plea in bar against him. And in like sort it is if the appeale be brought by the husband and wife, because the appeale is in the right; and so he must be her lawfull and rightfull husband, that must maintaine the appeale alone, or iointly with his wife.

A lawfull husband.

11.H.4.14.

30 This Statute of 6. Ric. 2. doth giue the appeale for default of the husband to the father, or to some other their next kinsman in blood; and so by the expresse words of this Statute, an appeale of rape is giuen to the father: and yet hée shall not haue an appeale, of the death of his sonne, or daughter. And where the sayd statute doth giue the appeale for default of the husband, to the father, or &c. That is to bée intended, where the woman doth consent to the rauisher: for otherwise the woman shall haue an appeale vpon the statute of Westminster 2.

Where the father or kinsman, shal haue an appeale of rape.

St.13.E.1.34

Fitz. Cor.17.

31 If a Lord do rauish his Niese, shée shall not haue an appeale of Rape against him: But the King shall punish him by indictment.

A Lord rauisheth his niese.

St.3.Ed.1.

32 It appeareth by the Statute intituled Officium Coronatoris, That if any bée appealed of Rape, hée shall bée attached by foure or fiue pledges, if the appeale be fresh, and the signe of truth apparant, by effusion of blood, or an open outcrie leuied. But if it be without any manifest token, or outcrie, two pledges shall suffice.

Pledges in rape.

St.6.Ed.1.9.

33 The before mentioned Statute of Glouceſter hath ordained, That an appeale shall not bée abated for default of fresh suite, where a man doth sue, within a yéere and a day, after the déede done. These words of the Statute bée generall, not making mention more, of an appeale of death, than of an appeale of any other felonie: But yet conferring them, with the other words in the statute, they may be intended specially to extend to an appeale of death, and to none other appeale: for if a man that is robbed doth make fresh suite, and doe his endeuour to apprehend the felon, and vse all his diligence to find him, although hée doe not commence his appeale, two or thrée yeares after

Within what time an appeale shall be commenced.

7.H.4.44.

the robberie committed, yet he may then well purſue it. And ſo in appeals of robberie, freſh ſute ſhall be decided by the diſcretion of the Juſtices. But in an appeale of death, it is a good plea for the Defendant to pleade, that hee of whoſe death, this appeale is purſued, died aboue a yeare and a day, before the ſaid appeale commenced. H.22.E.3.39.

From what time the yeare ſhal haue relation, touching an appeale.

34 The words of the foreſaid Statute of Glouceſter be, That a man ſhall purſue his appeale, within a yeare and day, after the deed done. And therefore if one man do ſtrike another vpon one day, and he dieth of the ſame ſtroke, certaine daies after, the appeale ſhalbe commenced within the yeare and day after the death, and not within the yeare and day after the ſtroke giuen: for there was no felonie committed, vntill the man was dead. But yet if one man doe giue to another a mortall wound in Februarie, and the K. doth in Aprill next giue pardon to the offendor of all felonies before that time committed, and the partie ſtricken doth die of the ſame wound in May following; this pardon ſhal diſcharge the offendor, becauſe the wound giuen by the offendor was the cauſe of the felony, the which wound was the offence towards the K. and that the K. hath pardoned, & ſo thereby the death of the partie, and all other things depending vpon the ſame offence be pardoned. St.6.Ed.1.9. Co.lib.4.42.

How the K. pardon ſhall haue relation. Pl com.f.402

The yere ſhall haue relation to that offence.

35 Where the words of the ſtatute of Glouceſter be, That a man ſhal purſue his appeal within a yeare and a day after the deed done: Thoſe words (viz. the deed done) ſhalbe intended of the felonie whereupon the appeale is commenced: for if one bee acceſſorie to another a yeare after the homicide or murder commited, an appeale ſhalbe purſued againſt him, and yet it is not within the yeare and day after the homicide or murder committed. S. Br. 52. St.6.E.1.9. 26.Aſſ.p.52.

Within what time an appeal of rape ſhall be commenced.

36 It appeareth by Britton, and alſo by the Statute of Weſtminſter 1. that an appeale of Rape ought to be commenced within forty dayes after the fact done: But then rape was but a treſpaſſe, which after by the Statute of Weſtminſter 2. was made felonie. In which Statute of Weſtminſter 2. there is no time limited, within the which a woman ſhalbe compellable to purſue her appeale of rape. And therefore it ſeemeth ſhe is at libertie to bring it when ſhe will, ſo that it be within a reaſonable time. St.3.E.1.13. St.13.Ed.1.34

In what coũty an appeale ſhalbe brought

37 An appeale ought to be brought in the Countie where the felonie was committed, as if it be murder or homicide, where the ſame murder or homicide was done: But if a man be ſtriken in one county, and then goeth into another countie, and there dieth of the ſame wound, by the common Law an appeale may be commenced either in the Countie where the ſtroke was giuen, or in the Countie where the partie ſtricken did after die, and the triall thereof ſhall be by the Iurors of both the counties, viz. as well of the county where he was ſtricken, as of the countie where he died. And ſo it was at the plaintifes pleaſure to bring his appeale in which of thoſe two counties he would. But ſince by the Statute of Aũ 2. & 3. E. 6. it is ordained, That where any perſon ſhall be feloniouſly ſtricken, or poiſoned in one county, and die of the ſame ſtroke or poyſoning in another County, then an indictment thereof found by Iurors of the county where the death ſhall happen (whether it be found before the Coroner, vpon the ſight of ſuch dead bodie, or before the Juſtices of peace, or other Juſtices or Commiſſioners, which ſhall haue authoritie to enquire of ſuch offences) ſhalbe as good in Law, as if the ſtroke or poyſoning had bin committed in 28.Ed.3.32.

A man ſtricken in one County dieth in another. 3.H.7.12. 4.H.7.13. 2.& 3. E.6.24.

in the ſame county, where the partie ſhall die, or where ſuch indictment ſhalbe found. And ſuch party, to whom appeale of murder ſhall be giuen by the Law, may commence, take, and ſue appeale of murder in the ſame county where the party ſo felonioully ſtricken or poyſoned ſhal die, as well againſt the principal and principals, as againſt euery acceſſory to the ſame offences, in whatſoeuer countie or place the acceſſorie ſhall be guiltie to the ſame. And the Juſt. before whom any ſuch appeale ſhalbe commenced, ſued, and taken within the yeare & day after ſuch murder and manſlaughter committed, ſhall proceed againſt euery ſuch acceſſory, in the ſame county, where ſuch appeale ſhalbe ſo taken, in like maner and forme, as if the ſame offence of acceſſorie, had bin committed in the ſame county, where ſuch appeale ſhalbe ſo taken, as wel by the trial of the Iurors of the county where ſuch appeall ſhalbe taken, vpon the plea of not guilty, pleaded by ſuch offendor, as otherwiſe. But note that no appeale is giuen by this Statute, nor remedy prouided againſt acceſſories in a forreine Countie, of other felonies (ſauing for murder or manſlaughter) but the ſame is left to the common Law.

Stamford. Acceſſories in other offences ſauing murder

38 An appeale of Rape ought to be brought in the Countie where the Rauiſhment was done. And therefore if a man doe take a woman againſt her will in one Countie, and then carrie her into another countie, and there do rauiſh her, the appeale ſhalbe only commenced in the Countie where the rauiſhment was committed. And though ſhee doe declare of the taking of her in another Countie, yet it ſhall be tried onely in the Countie where the appeale is brought: for the declaring of taking of her in another county, was but ſurpluſage, and needed not to haue beene inſerted, which doth not cauſe her count to abate. And in this caſe the woman appellant ſhall recouer nothing but the defendants death for the felonie, which ſhee ſhall obtaine in reſpect of his rauiſhment of her in the countie, whereunto he forcibly carried her, wherein only the felonie was committed.

In what coũtie an appeale of rape ſhall be brought.

3.H 7.12.

3.H.7.12. 39 By the ſame reaſon if a man doe take another by force in one Countie, and then carrie him into another countie, and there robbe him, or kill him: an appeale of felonie ſhalbe commenced onely in the Countie where the robberie or murder was done: for the taking, and carrying him away out of the firſt countie was but treſpaſſe, and there was no felony committed vntil the robberie or murder was committed.

Appeale of Robberie.

44.E.3.14. 4.H.4.3. 40 If one man do threaten another in one County that he will kill him if he do not bring him a ſum of money into another countie ſuch a day: In this caſe, if he that is threatened, do in reſpect of that menace, carry, and pay the ſaid ſumme of money to him that threatened him, according to his promiſe in the ſaid other county: this is robberie, though the partie needed not to haue payd the ſayd mony according to his promiſe, for that his ſaid promiſe was by menace, and not voluntarie, nor vpon cauſe. And there is reaſon that the appeale of robberie ſhall be commenced in the county where the money was paid, and not in the countie where the menace was made: for the effect and ſucceſſe of the matter maketh it felonie, which is the paiment of the money; and not the firſt cauſe, which was the threatening.

Threatning in one county to bring mony into another.

7.H.4.44. 4.H.7.5. 41 If a felon commit a robberie in one Countie, and then carrie the goods ſtolen into diuers other Counties, he that is robbed may haue his appeale of felonie

Goods robbed carried into diuers counties.

felonie in which of thole Counties he will: for the felon committeth felonie in euerie of the Counties, whither he carrieth any of the goods: And in which of thole Counties the partie robbed doth commence his appeale of Felony, there it shal be tried: for the propertie of thole goods was alwaies in the first & right owner of them. But he that is robbed may commence his appeale of Robberie only in that County where he was robbed, for there is no robberie done but in that Countie onely. But if a man being in one Countie, doe procure another man to commit a robberie in another Countie, which he doth accordingly: in this case the partie robbed shall haue his appeale of Robberie against the sayd procurer, as accessorie to this felonie, in the Countie where the procurement was, and not where the robberie was committed; for there was his felonie committed, where he did persuade and procure the robberie to be done. Co.lib.7.2. 26.Ass.p.32. 29 H.8. Dyer 40.

Before whom an appeale shalbe brought

42 He that may pursue an Appeale, is at his choyce, whether he will haue it by writ, or by bill. If he pursue it by bill, then he must find to the Sherife in the full countie, two sufficient pledges, being of the Countie where the felonie was committed, and distrainable within the sayde Countie, that he shall prosecute his Appeale according to the law of the Realme, and he shalbe thereunto receiued. And then the Coroner shall enter his Appeale, and the names of his pledges: and after the Baily of the place where the felonie was committed, shalbe commaunded, that he shall bring the bodies of those that be appealed, to the next Countie Court, to answer to the plaintife. And if the Baily do answer at the second Countie Court, that he cannot find them, then it shall be ordained, that they which be principall Appellees of the fact, shall be solemnly commaunded to yeeld to the Kings peace, and to appeare, and stand to the answer of such a felonie, whereof they be appealed: And so that shall be demanded from Countie to Countie, vntill they do appeare, or be Outlawed. And yet because the Statute of Magna Charta hath ordayned, That no Sherife, Constable, Escheator, Coroner, or other Bailife of the Kings, shall hold plea of the Crowne, It is agreed for Law, that vpon an Appeale commenced before the Sherife and the Coroners, although they may award processe against the Appellees vntil the Exigent, yet they cannot award the Exigent against the appellee, if he do not appeare: neither if he doe appeare, they can cause him to answer, but only they may commit him to prison, & that by force of the sayd stat. of Magna Charta. Britton. 22.Ass.p.77. 28.9.H.3.17.

Removing an appeale out of the Countie.

43 When an appeale is commenced before the Sherife and the Coroners in the countie, it may be removed into the Kings bench by a Certiorari, which must be awarded out of the Chauncerie, or out of the Kings bench, and is to be directed to the Shirife, and the Coroners: which proueth that an appeale is begunne, and of Record, as well before the Shirife, as before the Coroners: according to the Statute of West.1. which hath ordained, That the Coroners shall lawfully attach, and represent the pleas of the Crowne, and that the sherife shall haue counter-rolles with the Coroners, as well of appeals as of Enquests, of Attachments, or other things that doe belong vnto this office. And therefore a Certiorari to remoue an appeale directed to the Sherife onely is voyd: and an appeale of murder may be commenced, as well before the Sherife, as before the Coroners, as it is prooued by these words of the Statute of 3.H.7. viz. The wife or heire of the person slaine, or murdered, as case shall require, may commence their appeale in proper person, at any time within the yeare after the felonie done, before the Shirife and Coroners of the Countie, where St.3.E.1.10. 4.H.6.15 St.3.H.7.2.

where the ſaid felonie and murder was done, or before the King in his Bench, or Juſtices of Gaole deliuerie.

13.H.4.16. 9.H.4.2. 44 An appeale by Bill may bee commenced before Juſtices of Gaole deliuerie: but then the Appellee at the time of the Appeale begun againſt him, muſt be priſoner in the ſame Gaole, whereof thoſe Juſtices are to make deliuerie, or elſe ſuch an appeale is not to be receiued: Or otherwiſe one of them at the leaſt, againſt whom and others the ſaid appeale is entred, ought to be priſoner in the ſame Gaole, and if not, the ſame appeale is void. Yet an approuer may appeale others that are not in priſon, but at large: which is by force of the ſtatute of 28.E.1. de Appellatis. And when an appeale is commenced before Juſtices of Gaole deliuerie againſt diuers, whereof there is but one in priſon before them, this appeale ought to be remoued into the Kings Bench by a Certiorari, and from thence proces ſhall be awarded againſt them which be at large. And Juſtices of Aſſiſe may hold plea of appeales of robberie, by the commiſſion of Gaole deliuerie.

In appeale before Juſtices of Gaole deliuerie.

S. Approuers 19.

St. 28.E.1. 9.H.4.2.

Anno 1.M. Dyer. 99.

In appeale before Juſt. of Aſſiſe.

17.Ed 3.13. 45 As well as Juſtices of Gaole deliuerie, and the Shirife and Coroners haue authoritie to receiue an appeale by Bill, in like ſort Juſtices of the Kings Bench haue power to accept an appeale by Bill: for they be the ſoueraigne coroners of the Realme.

In appeale before the Ju. of the Kings Bench.

21.H.7.33. 32.H.6.4. 46 If one be in priſon for felonie in the Kings bench, or before the Juſtices of Gaole delivery, and after let to baile, yet an appeale by bill may be commenced againſt him, for hee is a priſoner notwithſtanding that bailement: for they which toke him in baile, be his guardians, and ſhalbe charged if he eſcape: and ſome doe affirme that they may impriſon him; and ſome do hold, that they ſhall be hanged for him. And vpon his bailement he ſhall find ſuerties to anſwer to all perſons. But an appeale is not to bee purſued againſt him, who is let at libertie by mainprize: for that he is not in ward.

Appeale againſt ons Bayled.

9.Ed.4.2. 39.H.6.47.

No appeale againſt him that is let by mainprize.

44.E.3.44. 47 Some doe affirme that an appeale may be commenced before Juſtices of peace, for they haue authoritie by their commiſſion, and by the Statute of 18.Ed.3.2. to heare and determine felonies. But others doe hold, that they muſt onely proceed vpon indictment found by a Jurie before them, and not vpon an appeale proſecuted at the ſuit of the partie grieued: for the words of their commiſſion be, Ad inquirendum per Sacramentum proborum & legalium hominum de comitatu prædicto, per quos rei veritas melius ſciri poterit, de omnibus & omnimodis felonijs &c. Et ad omnia & ſingula felonias &c. indictamenta prædicta, cæteraque omnia & ſingula præmiſſa, ſecundum leges & ſtatuta regni noſtri Angliæ (prout in huiuſmodi caſu fieri conſueuit aut debuit,) audiendum & terminandum. By which words it is to bee inferred, that they ſhall enquire and puniſh at the Kings ſuit vpon indictment, and not at the parties ſuite by appeale, ſuch felonie as ſhall bee committed within their Juriſdiction.

No appeale before Juſtices of peace.

St.1.H.4.14. 48 If one of the Kings ſubiects doe kill another of his ſubiects in a forrain Realm, the wife or next heire of him that was ſlain, as the caſe requireth, may haue an appeale of the ſame death in England, before the Conſtable & Marſhall of England, by force of the Statute of 1.H.4. which doth ordaine, That all appeales of things committed within the Realme, ſhall be tried and determined

In appeale before the Conſtable and Marſhall.

mined by the lawes of the Realme, and of things committed out of the realm, before the Constable and Marshall of England for the time being. And no appeales from hencefoorth shalbe made or pursued in Parliament.

No Appeale in Parliament.

Where there shalbe diuers appeales for one felonie, & where not.

49 It doth appeare by Bracton and Britton, that one might haue had in former ages, one appeale against the principall, and another against the Accessories: but since that law is changed, viz. The appellant shall haue but one appeale, in the which he must comprehend as well the principals as the Accessories, vnlesse it be in speciall cases: and that is confirmed by the Stat. of West. 1. which doth ordaine, That no person shall be outlawed vpon appeals of commandement, force, aide or receit, vntill the principall be attainted. But the appellant shall not let to attach his appeale at the next Countie, as well against the accessory, as against the principall: But the Exigent against the accessorie shall staie vntill the principall be attainted, by outlawrie or otherwise.

Bracton, Britton. Co.li.4.47. St.3.E.1.14.

One onely appeale for one felonie.

50 In an appeale against two if one doe appeare, & the other make default, yet the plaintife shall count against them both: and the same law which compelleth the appellant to count at one time against them both, doth enforce him to sue his appeale against them both: for if an appellant do bring an appeale against one person, and the appellee is attainted and hanged at his suite, and after he will bring an other appeale against one, or two others, for the same offence, he shall take no benefit by his suit, for he should haue ioyned them all in his first appeale. And the same Law is, if the first appellee had bin acquited, or that the appellant had bin Non-suit after apparance.

9.H.4.11. Co.li.4.47. 47.E.3.16.

Where diuers appeales for one felonie.

51 It seemeth that in some cases at this day, one may haue diuers appeals for one felonie: as if one in one countie doe procure another to robbe a man in another countie: In this case, the partie robbed shall haue one appeale against the principall in one countie, and another against the accessorie in another countie: or otherwise he should be without his remedie against the accessory by Appeale. But by the Statute of Anno 2. & E. 3. 6. if one in one countie doe procure another to kill a man in another countie, hee to whom the appeale of murder is giuen, shall commence his appeale in the countie, where the party shall die. S.Br.37.

St.2.& 3.E.6. 24.

Two appeals founded vpon one felonie.

52 And so it is, if the Appellant do commence his appeale against the principall within a yeare and a day after the felonie committed, and after the sayd appeale commenced, another will receiue the same felon: In this case the appellant may pursue another appeale against the said accessorie, for these two be seuerall felonies, which began at seuerall times. S.Br.35.

26.Ass.p.32. Co.li.4.43.

Robbery of seuerall parcels of goods.

53 If a man be robbed of two seuerall parcels of goods at one time, hee cannot haue two seuerall appeales for them, and put parcell of the goods robbed in one appeale, and parcel in another: but he must commence one appeale for the whole, or for parcel. And if he doe bring his appeale but for parcell, he shall lose the residue of the goods robbed, and the king shall haue them, for he cannot enlarge his appeale.

Fitz.Cor. 100

Where one shal answer to diuers appeals or indictments

54 If one man robbe seuerall men, every of the persons robbed may haue an appeale against the felon. And although he be attainted at the suit of one of them, yet he shalbe tried at the suit of the others, vpon their appeales, if it be so that

4.Ed.4.11. 7.H.4.31. Fitz.Cor.379. that they haue commenced their appeales before the said attainder. And if he be found culpable at their seuerall suits, and that they haue made fresh suite, they shall haue their goods againe, which were taken from them by robbery, as well as he shall, at whose suit he was first attainted. And those last Enquests shalbe taken at the suit of the parties, and not be adiudged Enquests of office. But if the other who haue cause of appeale, doe not commence their appeales, vntill the appellée bée attainted, at the suit of the first appellant, and that in the same countie where they ought to haue prosecuted their appeals, after such attainder, they shal not be receiued to commence them. But yet, if after such first attainder the King will graunt to the party attainded his pardon, then he shal answer to the said appeales so commenced against him after his Attainder: yea and for the Kings aduantage, a man attainted of felonie, shal answer to an offence committed before any pardon was graunted vnto him. As, a man being attainted of felonie, shall bée put to answer to a treason before committed, because in that case the King is to haue the Escheat. But in an appeale of murder, or rape, the Lawe doth differ from the before mentioned case of appeale of robberie: for if in appeale of murder or rape, the offendor bée attainted at the first apellants suite, hée shall not be put to answer to other appeales brought after for murder or rape, though they were commenced before the appellées attainder: séeing the appellants are not to haue any restitution of goods, or other benefit thereby, but only the attainder of the appellée, which is already attainted at the first appellants suit, and so to be hanged therefore.

Fitz.Cor.227. M.10.H.4.

5.H.6.5.

St.21.H.8.11 55 As seuerall persons vpon their seuerall appeales commenced shall haue restitution of their goods stollen or robbed from them by one man; so by the statute of Añ 21.H.8. a man shall haue restitution of his goods robbed or taken from him, vpon the indictment and arraignment of the offendor, and euidence giuen against him, by the partie robbed, or owner of the goods, or by some other by his procurement. Therefore if one man doe robbe or steale goods from three men seuerally, & he is indicted of the robbing or stealing from one of them, and arraigned thereupon: In this case, though the other two would giue euidence against the offendor, yet they shall not haue restitution of their goods by the intention or meaning of that stat. for the felon is not attainted of any other robberie or felonie, sauing of that whereof he is indicted. But if he be indited of all the three robberies or felonies seuerally, and arraigned vpon one of them, and found guiltie by the euidence giuen by one of the parties robbed or &c. yet hée shall be after arraigned vpon the other two inditements, to the intent that hée may be also found guiltie by the euidence of the other two persons robbed or &c, and that they may haue their goods stollen againe, according to the meaning of the foresaid statute. S. Restitution 4.

Answer to diuers indictments.

St.25.E.3.5. 56 Whereas by the common laws of this Realme, and also by the stat. pro Clero, made an. 25.E.3. no clerke arraigned of felony before a secular Iudge, which was demanded by the Ordinaris of the place, should be remanded to the gaole, but ought presently to bee arraigned of all his offences, or otherwise deliuered to the Ordinary: But because diuers persons did oftimes commit and do sundrie detestable murders, haynous robberies, and felonies, and other capitall offences, for the which clergie is not allowable by the laws and statutes of this realme; and after the same offences so done, either did fly out of the countie, or other parts of this realme, into the parts beyond the seas, or keepe themselues secret in other places, whereby they were not knowne for a great time,

He that is allowed his clergie shall answer to former offences.

and

& after did commit some other felony, for the which they might haue their clergie, and being arraigned of the same, had their clergie to them allowed, & thereupon were committed to the cuſtodie of the Ordinarie, according to the Law and cuſtome of this realme, the former offence, wherein clergie was not grantable, being then not knowne, and ſo by that meanes could not after be impeached for the ſaid other horrible and great offences, by the Law and cuſtome of this realme, to the great encouraging of offendors, bring ſuch practiſes of foreknowledge and ſet purpoſe, for the diſcharge of the ſame: Therefore for the reformation of the premiſſes, by the ſtat. of an. 8. Eli. it was enacted, That euery perſon which ſhall vpon his arraignment for any felonie, bee admitted to his clergy by the lawes of this realme, & ſhall before the ſame admiſſion haue committed any other offence, whereupon clergie by the Lawes & ſtat. is not allowable, and not being thereof before indicted & acquited, conuicted or attainted, or pardoned, ſhall & may be indicted or appealed for the ſame, and thereupon ordered and vſed in all things according to the Lawes, in ſuch maner, as though no ſuch admonition of clergie had beene. 8. El. 4.

Appeale of former offences.

57 And after, viz. an. 18. Eliz. a more generall ſtat. was made, That all and euery perſon and perſons which ſhal hereafter be admitted to haue the benefit of his or their clergie, ſhall notwithſtanding his or their admiſſion to the ſame, bee put to anſwer to all other felonies, whereof he or they ſhalbe hereafter indicted, or appealed, and not being thereof before acquited, attainted, conuicted, or pardoned, and ſhall in ſuch maner and forme be arraigned, tried, adiudged, and ſuffer ſuch execution for the ſame, as he or they could haue done, if as clerk or clerks conuict, they had bin deliuered to the Ordinary, and there had made his and their purgation. 18. El. 6. 8. Inſtit. 32.

A Clerke ſhal anſwer to former offences.

58 If a man commence his appeale of death before the Coroner in the county, preſently the Seriant of the county ſhalbe commanded, that hee bring the bodies of the apelles to the next county, to anſwer the plaintife. And if the ſaid Seriant do anſwer at the ſecond cōty, that he cannot find them, the an Exigent ſhalbe awarded againſt the principals. But the Exigent touching the acceſſaries ſhall ſtay vntill the principals be outlawed. And ſo it appeareth by Britton, & ſome other authoritie, that an Exigent ſhalbe awarded in appeals of death commēced before ỹ coroner in the connty, after the firſt Capias returned. Britton. 22. Aſſ. p. 81. Fitz. Cor. 234. Fl. Proces, 206

The proces in Appeale.

Proces vpon Appeal before the Coroner.

59 But in an Appeale or Indictment of robbery, or other felony, there ſhal be two Capias awarded before the Exigent. And the ſame is confirmed by theſe words of the ſtat. de proditionibus, made 25. E. 3. viz. It is agreed, that after any man be indicted of felony, before the Juſt. to heare and determine, in their Seſſions, the Sherife ſhalbe commanded to attache his body, by a writ or precept called Capias. And if the Sherife returne in the ſaid precept, that the body is not found, another writ or precept of Capias ſhall incontinently be awarded returnable, three weekes after, and in the ſame writ or precept it ſhall bee compriſed, that the Sherife ſhall cauſe to bee ſeiſed all his chattels, and ſafely keepe them vntill the day of the writ or precept returned. And if the Sherife returne, that the body is not found, and the indictee commeth not, the Exigent ſhalbe awarded, and the chattels ſhalbe forfeited, as the law of the crown commaundeth. But if he come and yeild himſelfe, or be taken by the Sheriffe or other miniſter, before the returne of the ſecond Capias, then the goods and chattels ſhall be ſaued. This ſtatute doth not make mention of the death of a man, Pl. Proces, 206 Fitz. Cor. 184. 28. 25. E. 3. 14. 8. Fol. 44.

Proces vpon an Appeale or Indictment of felonie.

nor

nor of robberie, but of felonie generally, which includeth all. And yet some do affirme, that it was intended to be made onely for robberie and larcenie, but it is prouided for those which be indicted before Iustices to heare & determine, and not for those against whom an appeale is commenced before the Coroner: and it was rather ordained to seise the felons goods vpon the second Capias, than to giue proceſſe.

Fitz. Proceſſe 226.

60 And because some persons appealed or indicted of diuers felonies in one countie, or outlawed in the same countie, were dwelling or receiued in an other countie, whereby such felonious persons indicted and outlawed, haue béene incouraged in their mischiefe, for that they might not be attached in another countie: for the redreſſe whereof, by a statute made Anno 5. E. 3. it was ordained, That the Iustices assigned to heare and determine such felonies, shall direct their writ to all the counties of England, where néede shall be, to take such persons indicted.

Stat. 5. E. 3. 11

Proceſſe against indicters in another countie.

61 Because diuers persons for their singular reuenge, and not of right, malitiously, of their subtill imagination, haue caused and procured, falsly to indict and appeale seuerall of the Kings subiects, of diuers treasons, felonies, and trespasses, before Iustices of peace and other commissioners, and other Iusticers hauing authority to take indictments or appeales, in diuers forreine counties, liberties, and franchiſes of England, wherin the said liege people neither be, nor euer were conuersant or dwelling: By force of which appeales and indictments, and the proceſſes thereupon made in the said counties, franchiſes, and liberties, the said persons so indicted haue béene put in Exigent, and after outlawed, and thereupon their goods and chattels, lands and tenements haue béene forfeited, and they in great perill of their liues, whereas the said persons so indicted, appealed, or put in Exigent, or outlawed, had neuer knowledge of such indictments, appeales, Exigents, or outlaries: For the preuention whereof, it was ordained by the statute of Anno 8. H. 6. That vpon euerie indictment or appeale, by the which any of the kings liege people dwelling in other counties than there where the indictment or appeale shall be taken, of treason, felonie, and trespaſſe, before Iustices of peace, or anie other hauing power to take such indictments or appeales, or other Commissioners or Iustices in anie countie, franchiſe, or libertie, within England, before anie Exigent awarded, vpon any indictment or appeale to be taken in forme aforesaid, immediatly after the firſt writ of Capias, vpon euery such indictment, or appeale, awarded and returned, another writ of Capias shalbe awarded, directed to the sheriſe of the countie, whereof he which is indicted is or was supposed to be conuersant by the same indictment, returnable before the same Iustices or Commissioners, before whom hée is indicted or appealed, at a certaine day, containing the space of fiue moneths, from the date of the said laſt writ: by the which writ of second Capias, it shall be contained and commanded to the same Sheriſe, to take the bodie of him which is so indicted or appealed, if hée may be found within his bailiwike: and if hée cannot be found within his bailiwike, that the sheriſe shall make proclamation in two counties, before the returne of the same writ, that hée which is so indicted or appealed, shall appéere before the same Iustices or Commissioners in the county, liberty, or franchiſe where hée is so indicted or appealed, at the day contained in the said laſt writ of Capias, to answer to the King, or to the partie, of the felonie, treason, or trespaſſe, whereof hée is indicted or appealed: After which second writ of Capias so serued

Stat. 8. H. 6. 10

Appeale or indictment of persons dwelling in forreine Counties.

and returned, if hée which is so indicted or appealed, doth not come at the day of the said writ of Capias returned, the Exigent shall be awarded against such indictées or appellées, and euery of them. And if any Exigent be awarded vpon anie such indictment, or appeale, against the foresaid forme, or anie outlawrie thereupon pronounced, the said Exigent and the Outlawrie thereupon pronounced, and euerie of them shall be void. And the partie against whom such Exigent is awarded, or outlarie pronounced, against the foresaid forme, shall not be endammaged in his life, lands, goodes, &c. And euerie one which is indicted or appealed in forme aforesaid, after hée is acquited by verdict, in forme of Lawe, may haue an action vpon the Case, against euerie procurer of such indictments or appeales: in which Action there shall be like proceſſe as in an action of Treſpaſſe vi & armis. And if the said procurers be attainted, the Plaintife shall recouer treble dammages. But this statute extendeth not to indictments or appeales taken in the Countie of Chester: Nor to anie indictment or appeale of felonie or treason, taken of any of the kings liege people, which at the time of the same felonie or treason supposed, is, and was conuersant within the Countie, whereof the indictment or appeale maketh mention, but the like proceſſe shall be made against such indicted or appealed person as hath béene vsed.

Proceſſe vpon an indictment or appeale remoued into the Kings bench.

62 And becauſe after the making of the said statute of Anno 8.H.6. some intending to defraud the said Statute, did sue to remoue such appeales and indictments, out of the hands of the Justices or Commissioners aforesaid, into the Kings bench, and elsewhere, by Certiorari, or otherwise, vnknowne to the partie so indicted, and thereupon sued the Proceſſe vsed at the common Lawe before the making of the said Statute, in the kings Bench, and elsewhere, after the remouing thereof, to the great impouerishment of diuers the kings subiects: Therefore by the Statute made Anno 10.H.6. it was enacted, That if any such indictments taken before any Justices of Peace, or anie other hauing power to take such indictments or appeales, or other Justices or Commissioners, in anie countie, Franchiſe, or libertie of England, shall bée remoued into the Kings Bench, or elsewhere, by Certiorari, or otherwiſe, then after such remouing, before anie Exigent awarded vpon anie such indictment or appeale, in forme aforesaid taken, immediatly after the first writ of Capias, vpon euerie such indictment or appeale awarded and returned, an other writ of Capias shall bée awarded, directed to the Sherife of the Countie, whereof hée that is indicted or appealed, is, or was supposed to be conuersant, by the same indictment or appeale returnable in the Kings Bench, at a certaine day, containing the space of three moneths, from the date of the said last writ of Capias, according to the manner and forme that the Justices of Peace and others ought to haue done before such remouing. And if anie Exigent bée awarded vpon anie such Indictment or Appeale after such remouing, against the forme aforesaid, or anie Outlawris thereupon pronounced, as well the same Exigent as the Outlawrie, and euerie of them shall be void. 2. 10. H. 6. 6.

In the Appeale he must be supposed to be of a forreine Countie.

63 The foresaid Statute of 8.H.6. doth not take place, but where by the Appeale or by the Indictment it is precisely supposed, that the defendant was dwelling in a forreine Countie: for if hée be supposed to be dwelling there by an Alias dictus, it is out of the compaſſe of the statute. As in an appeale or indictment in the county of Middleſex against A.B. in comitatu tuo yeoman, al's dictum 8. H. 6. 10. 1 Ed. 4. 1.

dictum A.B. de C. in comitatu Sussex yeoman: Because that which is supposed by the Alias dictus is not trauersable, nor materiall. And likewise it is in an Appeale or Indictment against I. of S. in comitatu H. nuper de L. in comitatu K. nuper de R. in comitatu T.

Fi.Proces 192

64 If a man be appealed to be dwelling in no place certaine the day of the Appeale commenced, but in this maner, viz. nuper de S. in comitatu L. and nuper de B. in comitatu T. then Processe shall be awarded into all the counties whereof he is so supposed to be of late dwelling.

In appellée dwelling in no place certaine.

Sta.8.H.6,10

65 The foresaid statute of 8.H.6. hath ordained, That after the first Capias, another Capias shall be awarded to the sherife of the Countie whereof he which is so indicted is, or was supposed to be dwelling by the same indictment. And therefore if an appeale or indictment be exhibited against one in the countie of M. naming him of D. in the countie of Chester, or of some other place, which is a countie Palantine: In this case, no processe can be awarded vpon this statute, which may be directed to the sherife, according to the words of the statute. But processe shall be awarded vpon this Statute to the prince, or his lieutenant: for it is in like mischiefe, and the Statute is generall in all the Realme, which doth bind as well those which be of a Countie Palantine, as others. But if they of the Countie Palantine will not serue, and returne the writ directed to them vpon this Statute, then without further delay the Exigent shall be awarded, otherwise the party should be infinitly delayed.

Processe into a countie Palantine.

19.H.6.2.
31.H.6.11.

66 The foresaid processe specified in the before rehearsed statute of 8.H.6. shall extend as well to accessories, as to principalls, sauing that the Exigent as to the accessories, shalbe stated vntill the principalls be outlawed: And that by the statute of West. 1. the words whereof be these. Because men haue vsed in some Counties to outlaw such persons as be appealed of commaundement, force, aide, or escape, within the same terme that they do outlaw him which is appealed of the fact, it is ordained, That none shall be outlawed for an appeale of commandement, force, aide, or receit, vntill he that is appealed of the deede be attainted, so that one law shall be thereof through the whole Realme. But the appellant shal not let to attach his appeale at the next county against them, as well as against the appellées of the deede. But the Exigent against the Accessorie shall stay vntill the appellée of the deede be attainted by outlawrie or otherwise. And Britton doth affirme, That as soone as the principalls be outlawed, the Exigent shall be awarded against the accessories.

Processe against principall and accessorie.

St.3.Ed.1.14.

Britton.

St.3.Ed.1.14

43.Ed.3.17

67 The before rehersed stat. of West. 1. seemeth only to extend to Appeales commenced by bil: for in an appeale commenced by writ, it appeareth not vntil the declaration made thereupon, that there be any accessories in the Appeale, but, for any thing contained in the writ, all do appeare to be principals, and for that cause the Exigent is awarded against them all at one time. And therefore the plaintif must be aduised, how he doth pray the Exigent, and against whom: for if he do pray the Exigent against them all, he is thereby concluded after to count against any of them as accessories: for the Law intendeth that he must take knowledge which were accessories, and which not. And therefore in that case he should haue staid the demanding of the Exigent against them, vntil the principals had been attainted. And that is the difference betweene the principals and the accessories, as touching the time of the awarding of the Exigent.

The statute of W.1. extendeth onely to Appeales commenced by bil.

In Appeale one doth appéere, and another makes default.

68 If an Appeale be brought against diuerſe, and one doth appeare and pleade, yet Proceſſe ſhall be continued againſt the reſidue. But if he which appéereth doth pleade in abatement of the Appeale, or matter in barre, which proueth that the Appeale doth not lie: in thoſe caſes the Court ſhall ſtay the awarding of the Exigent againſt the others, vntill the Court be aduiſed whether the Appeale will lie or not: for if the Appeale doe abate, it doth abate againſt them all, as well principalls as acceſſories. 9.H.4.2.

Proceſſe to remoue an Appeale.

69 The Proceſſe to remoue an Appeale out of the countie, or from the Iuſtices of gaole deliuerie, is a Certiorari awarded out of the Chauncerie, or the Kings Bench, and it may be ſued as well by the Defendant as the Plaintife: which Certiorari muſt agrée with the Appeale or the Indictment that is to be remoued: for if the Appeale or Indictment be of two horſes, and the Certiorari is but of one, this is no good writ. 10.H.4.4. 3.Aſſ.pla.3.

Certiorari into the Countie.

70 If an Appeale be attached within the countie, before the Sherife and the Coroners, the Certiorari muſt be directed to them both, viz. as well to the Sherife as to the coroners, for a Certiorari directed to the Sherife only, is void. 4.H.6.15. Regiſter, Ind. fol.76.

Proceſſe againſt the pl. after an appeale remoued.

71 After an Appeale is remoued, the parties be without day before the Sherife and the coroners. And therefore if the Plaintife do not proceede with his Appeale in the Kings Bench, yet he ſhall not be nonſuit thereby, vntill a Scire facias be awarded againſt him, and that hée be thereupon returned warned, and doth make default: for if a Nihil be returned vpon him, an Alias ſhall bée awarded againſt him before hée ſhall be nonſuit: vpon which writ, if at an other time a Nihil be returned, another Scire facias ſhall be awarded, returnable at a certaine day, & in the meane time the Appellée ſhall be let to mainprize. 42.Ed.3.32.

Proceſſe againſt the defendant after an Appeale remoued.

72 After an Appeale is remoued, if the Plaintife purſue his Appeale, hée néed not ſue a Scire facias againſt the Defendant, if he do make default, but a Capias and Exigent. And if the Defendant doth appéere and pleade, and after at another day maketh default (either becauſe he is eſcaped out of priſon, or being let to mainprize doth not appéere) yet the Enqueſt ſhall not be taken in his default, nor in any caſe of felonie. But proces ſhalbe awarded againſt him ad audiendum Iudicium, in ſuch maner, that if he come not at the beginning by the Exigent, then Exegi de nouo ſhall be awarded, by the which the Sherife ſhall be commaunded to take him, if &c. to heare his iudgement: And if not &c. that he be outlawed. But if he do not come at the firſt by Capias, then a Capias de nouo ſhalbe awarded, and after the Exigent, or another Capias, according to the nature of the offence, whereupon the appeale is grounded. 16.Aſſ.pla.13 20.Aſſ.pla.5. Fitz. Exigent 18.

Proceſſe againſt one that by the ſherifes returne is eſcaped.

73 A woman brought an Appeale againſt an other of the death of her huſband: vpon proceſſe awarded againſt the appellée the Sherife returned Cepi corpus, and at the day had not the bodie, whereupon hée was amerced, and alſo was commanded to bring the body, and ſo twice or thrice, and did nothing: whereupon the Plaintife prayed an Exigent, affirming that the priſoner eſcaped, as the Sherife was carrying him to the gaole: But the Iuſtices would not award the Exigent againſt one, which appeered to them to bée in priſon: and therefore they ſent to the Sherife to haue the body, and if he returned this eſcape, then the plaintife ſhould haue his requeſt, and not otherwiſe. 30.Aſſ.pla.23

13.H.7.9

74 In an Appeale, if the parties be at issue, and the Plaintife will not sue forth processe against the Enquest, in that case the Defendant may sue forth processe with a proviso, as well as he may in other actions: which writ when it is returned serued, the Plaintife may pray a Tales, notwithstanding that the Venire facias was pursued by the Defendant, and shal haue it by common course, whether the Defendant doe agree thereunto or not.

Processe with a proviso for the Appellee.

St. 1. & 2. P. & M. 13.

75 By the Statute of Anno 1. & 2. P. & M. it is ordained, That no writs of Habeas corpus, or Certiorari shall be granted to remoue any prisoner out of any gaole, or to remoue anie Recognisance, except the same Writs be signed with the proper hands of the chiefe Justice, or in his absence, of one of the Justices of the Court, out of the which the same writs shall be awarded or made, vpon paine that he which writeth any such Writs, not being signed as aforesaid, shall forfeit to the King for euery such writ fiue pounds.

Proces to remoue prisoners or records.

Bract. de Cor. cap 18. Britton.

76 He that is appealed or indicted of felonie, and imprisoned for the same, when he commeth before the Justices to the place of iudgement, to answer for the same felonie, shall come bare headed, lose, at libertie, without any yrons or bonds (sauing with shackles about his legges, for feare of escaping) so that no paine shall take away or weaken his reason to defend himselfe, nor constraine him to make any other aunswer, but such as best standeth with his owne free will.

How the Appellee shall be led to the bar.

77 When the Appellee is at the barre to answer to the Appellant, the Appellant must count or declare against the Appellee, the which count doth varie according to the varietie of Appeales; for some be of death, some of rape, some of robberie, and some other of other felonies. The forme of Appeale of Murder is in this maner: A. hic instanter appellat B. de morte C. fratris sui, de eo quod cum prædictus C. fuit in pace Dei, & Domini Regis, apud D. tali die, hora, & anno, ibi venit B. vt felo domini regis in assultu præmeditato, vi & armis &c. & in ipsum C. felonicè adtunc & ibidem insultum fecit, & cum quodam gladio precij xij. d'. quem ipse in manu sua dextra adtunc & ibidem tenuit, prædictum C. super caput suum percussit, & vnam plagam mortalem, in longitudine duorum pollicium, in anteriore parte capitis sui, vsque ad cerebrum, eidem C. adtunc & ibidem felonicè dedit: de qua quidem plaga prædictus C. per tres dies proxime sequentes languebat, & tunc ibidem obijt: vel immediate ibidem obijt. Et sic ibidem B. vt felo domini Regis prædictum C. felonicè interfecit, & murdrauerit, contra pacem dicti domini Regis, coronam, & dignitatem suas, & quod hoc fecit nequiter, & vt felo, contra pacem Dei & Domini Regis, prædictus A. offert hoc dirationare, prout curia Domini Regis hic considerauerit. And so it appeareth, that the auntient Lawe in diuerse points touching Appeales is chaunged by the Statute of Glouceſter Anno 6. Ed. 1. which hath ordained, That if the Appellant in appeale doe declare the deede, the yeare, the daie, the houre, the time of the King, and the towne where the deed was done, and with what weapon he was slaine, the Appeale shall be of force. This Statute maketh the yeare, the day, the houre, the time of the King, and the towne, things materiall; and that vpon good cause: For if the Appellee can proue by certaine demonstration, and the testimony of credible persons, that he was the same day in an other place, so that by no meanes it can be presumed, that he was present the same day at the committing of that fact, in respect of the great distance of the place, then the Appellants sute shall faile. And the same reason

Count in Appeale.

An Appeale of Murder.

6. Ed. 1. 9

Bracton.

The yeare, day, houre, time of the King, and the towne materiall.

is of the houre: for if hee that is supposed to kill the man, was twentie miles from that place where the deede was done, the same houre wherein that murder was committed, he cannot be guiltie of that fact, and yet it may be he was there sometime that day, but not that houre: But a man is not of necessitie compellable at this day by the common Law, to put into his Declaration the houre: which Declaration by the common Law any man may yet make, notwithstanding the foresaid statute of Glouc. 6 Stams.

where the houre may be left out.

78 The Plaintife is to make special care, that he put into his Declaration the place where the fact was done, for the said statute of Glouc. doth specially commaund it by expresse words. And therefore if an appeale be brought against diuers, naming them of seuerall Townes, or Villages, and after in his Count he will say, at the place aforesaid, this is not good, for no man can tell to which of the places aforesaid, to referre it: and seeing there be diuers of them in number, he ought to expresse the place by name, or otherwise it is not good. If a man be stricken mortally in one place, whereof hee dieth shortly after in an other place, the Appellant must count in his appeale, that the Defendant did commit the murder in the place where the partie died, and not in the countie, towne, or place, where the stroke was giuen. 21. Ed. 4. 25. Co. lib. 4. 42.

The place where the fact was done.

79 There be diuers other formes of Declarations in appeales of death; as in appeale of death against three as principals, and the Appellant doth count, that such a day and such an houre one of them did strike her husband (of whose death she doth bring the appeale) in the necke, whereof hee died: and the same houre another did strike him to the heart: so that if he had not died of the first blow, hee would haue died of the second: and that the third did strike him in another part of his bodie, and so count seuerally against them, that euerie of them gaue him a mortall wound, and shew the manner of the wound, according to the fact: for the statute of Glouc. doth ordaine, That he shall count of the fact, and according to the difference of the fact the Count in an Appeale shall differ, for of necessitie the fact must bee declared as it was done, or as the Law doth expound it to be done. And therefore, if two be present at the death of a man, and one doth not strike him, but commaundeth the other to strike him, in regard whereof hee doth kill him; in this case, in an Appeale against them, the Appellant shal count, that either of them did strike him mortally: and in like sort, in an appeale of Rape against two, where one was present, and did abbet the other to rauish the woman, in that case the count shall be, that they both did rauish her, for in that one there was the rauishment of them both. 44. Ed. 3. 38. 21. Ed. 4. 71. 4. H. 7. 18. 11. H. 4. 23. Fitz. cor. 228.

Count in appeale of death against three as principals.

The fact must be declared.

80 In an Appeale of death, as cosin and heire, the Appellant must shew in his count, how he is cosin: and in Appeale of Robbery, he must expresse the things robbed: as whether they were his owne goods, or another mans: and if it were in money, he must shew how much, and what kinde of money: if it were bullion, the value: if it were coined, the qualitie and price: if it were a garment, the colour, and the price: if it were cloth, the colour, the price, and number of elles: if it were cattell, the kinde, the colour, and price: and in an Appeale of Rape, hee must count of the tearing of garments, and sheading of bloud. 45. Ed. 3. 25. 27. Ass. pla. 25. Bracton.

Count in appeale of Robbrie.

81 There

St.13.E.1.34. 81 There be two appeales of Rape, one vpon the ſtat. of Weſt.2. which ma-
2.6.R.2.6. keth it felony to rauiſh a maried wife, maid, or other woman: and another vpon the ſtat. of 6.R.2. which gineth the forfeiture, where the woman rauiſhed doth conſent, and aſſigneth who ſhall proſecute the ſuit againſt the rauiſhers. In an appeale brought vpon the ſtat. of Weſtm 2. the appellant nede not rehearſe the ſtat. But otherwiſe it is an appeale brought vpon the ſtat. of 6.R.2. for there he muſt rehearſe the ſtatute in his count: and if in appeale of Rape
11.H.4.73. brought vpon the ſaid ſtat. of 6.R.2. the plaintife do count, that the defendant did rauiſh his wife, contrary to the forme of the ſaid ſtatute, he ſhall not ned to alledge, that his wife did conſent to the rauiſher: for that is implied in theſe
24.El.Dyer 311. words, contra formam ſtatuti, which words be in the declaration: and although there be not in the declaration theſe words, viz. carnaliter cognouit, yet if there be theſe words, viz. felonice rapuit, they doe imply the other words: for it can be no felony, if there be not carnall knowledge: and ſo it is to be noted, that in felony a count may be by implication. S. Felonies by Statute 2.

Where in appeale of Rape the ſtat. muſt be rehearſed in the count.

44.E.3.38. 82 The defence which the appellée is to make in an appeale is, viz. That he doth defend all manner of Appeals, Awaights, Attaints, Pretences, & whatſoeuer is againſt the peace of the King, his Crowne, and Dignitie, and to ſay,
Bracton. that he is not guilty. Bracton writeth, That he which is appelled of the deed, doth come and defend all manner of felony, and that the peace of the king is not broken, & whatſoeuer is againſt the K. peace, and the death, & whatſoeuer is obiected againſt him: and that he doth put himſelfe vpon the countrey, of good and euill, that he is not guilty thereof, if he do chuſe the country: Or that he is ready to defend himſelfe by his body againſt the appellant, as the kings Court ſhall conſider: for if he will ſimply ſay, that he will defend himſelfe as the kings Court ſhall conſider, vnleſſe he will say more he ſhall not be defended: for the kings Court muſt not inſtruct him, in what manner he ought to defend himſelfe: and if he do ſay, that he is ready to defend himſelfe either by his bodie, or by the countrey, as the kings court ſhall conſider, hee ſeemeth thereby to take from himſelfe election: And the kings court ought not to compell him to the one, more then to the other, nor to inforce him how he ſhall defend himſelfe, ſeeing he hath free choice: and therefore he muſt hold him to one of them: But if he make his election to be tried by the countrey, it ſhall not be in his choice what countrey he will take.

Defence in appeale.

Fitz.Cor.122. 83 A writ of Appeal ſhall abate for falſe Latine, or for lacke of forme: as in a writ of Appeal this word Habeas did want, and therefore the appeal abated, without amendment. In an Appeal brought againſt a principall and acceſſo-
18.Eliz. Dyer 348. ries of the death of A.B. of C. in the County of D. the acceſſorie pleaded, that there was no ſuch A.B. at the time of the writ brought, neither was there euer any ſuch, as the writ ſuppoſeth, and demaunded iudgement of the writ: and this was aduudged a good plea, in abatement of the writ, if there were no ſuch A.B. in the ſaid County of D. though there was one at that time of the name of A.B. in an other County: Or if the ſaid A.B. dyed before this Appeal commenced.

Pleas to the writ in appeal

84 In an appeal of Rape the writ ſhall be, ad reſpondendum appellanti ſecundum formam ſtatuti, quare vxorem ſuam rapuit, and not vnde eum appellat ſecundum formam ſtatuti: becauſe the ſtatute doth not giue the appeal: for the appeal was at the common Law: but hee ought to aunſwere according

The forme of the writ of appeal of Rape.

to

to the Statute, to this intent, that he shall not wage battaile: for the Statute sayth, Ad duellum vadiandum minimè recipiatur. And though in his writ of appeale of Rape, he doth not vse these words felonicè Rapuit, yet is the writ good, notwithstanding that, for in this word Rapuit, felony is implied. If in an appeale of Rape the writ hath not this word Rapuit, it shall abate, although it hath words amounting to the same effect, as carnaliter cognouit, & such like. S. Felony by Statute 4. 2.E.6.R.2.6.

Rapuit materiall.

3.Eliz.Dyer 202.

Not two appeales for one offẽce against one person.

85 One shall not haue diuers writs of Appeale, depending at one time against another, of one felony. But yet before the writ be abated, it is requisite, that the court be satisfied, that both those writs were pursued by the plaintife, which must be proued by some act that the plaintife hath done, as if he hath appeared to them both, and counted vpon them: for notwithstanding, that one of them hath bin deliuered of record to the shirife to serue, yet seeing that may bee done by a stranger, as well as by the plaintife, it shall be no conclusion to the plaintife to say, that the said writ so deliuered of record, was not his sute. And the like law is, if an appeale by bill be commenced in the county before the shirife and the Coroners, and is remoued out of the county into a court of record, and there depending, the plaintife doth purchase another appeale by writ, this appeale by writ shall abate. But it is otherwise, if the appeale by writ be purchased before the appeale by bill remoued out of the county: for there the Court ought to send for the appeale in the county, without abating the appeale which is commenced by writ: and this is more worthy, and of an higher nature, then is the appeale by bill commenced in the county, which is but as a plaint, vntill after it be remoued: for it is a common course in the K. Bench, when an appeale is depending there by Writ, to send for the appeale commenced by bill in the county: and yet if the appellant be nonsute in his appeale depending in the county, his Writ shall abate. 7.H.7.16. Co.lib.4.47. 4.H.6.15. 10.H.4.4.

Pleading of one in appeale against two.

86 In an appeale brought against two, one of them may plead, that his companion, that was named with him in the Writ, died at such a place, before the Writ purchased: Or that there was none such in Rerum natura, as the other which was named with him in the Writ, the day of the Writ purchased: for if he that doth appeare, should not plead these pleas, there is none to plead them: and in the forsaid cases, & in all other cases of appeales against seuerall persons, if the appeale doth abate against one of them, it doth abate against them all. 21.Ed.4.71. 7.H.4.27. 9.H.4.2.

The plaintife misnamed.

87 In an appeale, if the def. do plead that the plaintife is misnamed, if the plaintife will confesse it, the couin shall be examined, viz. whether he doth it by couin betweene him and the plaintife, or not. But if it be proued true, that the plaintife is misnamed, the appeale shall abate. 9.H.5.2.

Two or three pleas to the writ.

88 In an appeale the defendant may haue two or three pleas to the writ as the tenant shall haue in an assise: But he must take care, that one of them be not contrary to the other.

Warres in appeale.

89 To make a barre in appeale, is to run ouer the forsaid title to whom appeales be giuen, and according thereunto to frame his plea in barre for if an appeale be commenced by one that hath no title to maintaine it, that is good matter to plead in barre against the appellant. As, if a woman doe bring an

appeale

28.E.3.50. 27.Ass.p.30. 50.Ed.3.150. appeale of the death of her husband, it is a good plea to plead, that after the death of her husband she hath married another husband: Or that shee was neuer accoupled in lawfull marriage to him, of whose death she doth bring the appeale. Appeale of death brought by the wife.

20.H.6.47. Kel.fol.120. Fitz.Cor 384. 27.Ass.p.25. 90 If an appeale of death be brought by the heire, it is a good plea to plead, that he which is dead, hath a wife living, to whom the appeale is giuen: or that the plaintife who supposeth himselfe to be heire, is not next heire to him that was slaine, but that he hath an elder brother, or that he is a bastard: or to plead, that the plaintife in this appeale of death hath surceased his time, for that the appeale was not brought within the yeare and day after the death of him, who is supposed to be killed: or to say, that he of whose death this appeal is brought is living at such a place: or to bring the party supposed to bee slaine, into the court, that he may be seene, and knowne to be living. Warres in appeale of death by the heire.

8.H.4.18.

Fitz.Cor.19. 91 In an appeale of Robbery it is a good plea to plead, that the plaintife is his villaine. And in appeale of Rape brought by the husband and wife, it is a good plea to plead, neuer accoupled in lawfull marriage, or to plead villenage in the plaintife. In an appeale of Robberie it is no good plea for the defendant to plead in barre, that the appellant brought an action of Trespas against him for the same goods carried away, and recouered: for the appeale of Robbery is of a higher nature, and concerneth the life of a man. Robbery Rape.

11.H.4.14.

Co.lib.4 43. a.E.3.14.

Fitz.Cor.332. 92 There be some other pleas in barre in an appeale, which bee generall and will serue for all manner of appeales of Felony: as to plead, that the plaintife is attainted of Treason or Felony: Or that he is a Monke, a Priest, not of perfect memorie, dumbe, deafe, a lazar, a naturall fole, or that he is maymed by an other, and not by the defendant. But if the plaintifes attainder be but by Outlawrie, which is erronious, then his attainder is no barre but for the time, viz. vntill he hath reuersed the Vtlarie. S. Approuers 10. 14. Generall pleas in barre in appeale.

Fitz.Vtlarie 47.

9.H.4.2. 47.Ed.3.16. 93 It is a good plea in barre in an Appeal, to say that the plaintife at an other time brought an appeal of the same felonie against the defendant, in the which he was nonsute, or made a Retraxit: Or that the plaintife did at an other time pursue an appeal of the same felonie against an other, who was attainted, or acquit at his sute. If a man be indicted of Manslaughter, and vpon his arraignment he confesseth the felony, and prayeth, and hath his Clergy: If after an appeal of Murther be brought against the said offendor, of the murther of the same man, it is a good plea for him to plead, that he was at an other time conuict of the same felony. And the same law is, if one bring an appeale of Murther against another, and the defendant pleadeth not guilty, and is found guilty of manslaughter, and hath his Clergy, if after he be indicted & arraigned of the same offence, and he doth plead the former conuiction, it is a good plea in barre. S. Indictments 47. The plaintife brought another appeale.

Co.lib.4.40. 45.

Fitz.Cor.98. 94 It is a good plea in barre in an appeale for the defendant to plead, that the plaintife made vnto him a Release of the same offence: for it will not serue to plead a Release made to any other, sauing to himselfe, though the other to whom the Release is made, be named with him in the appeale. And in like sort, though the plaintife made a Retrarit against one of them, this The plaintife release in barre.

this shall not barre him against them both, but the appeale shall stand good against the other.

Pleading not guilty after other pleas.

95 And when the defendant hath pleaded any of the foresaid pleas, yet (in fauor of life) the law doth permit him to plead ouer to the felony (viz. not guilty) and his plea by that meanes shal not be adiudged double, vnlesse it be in the case of a release: for there he shall not be allowed to plead ouer to the felonie, because it is contrary to his foresaid plea: Neither shall he plead ouer to the felony, when the defendant in an appeale of Robbery doth plead Villenage in the plaintife, for if he should plead ouer to the felony, the plaintife by that meanes should be infranchised. But if the Villenage be found against the defendant, he shall haue this plea of not guiltie, as well as he shall haue, when he pleadeth any of the foresaid barres, without concluding ouer to the felony: yet notwithstanding if the barre be found against him, he may plead ouer to the felony, viz. not guilty, sauing in pleading of a release, for by that plea he confesseth the felony by implication. 22.E.4.39. 28.E.3 91. 18.E.3.32.

Where the K. may prosecute an appeale begun by another.

96 If the appellant do surcease to prosecute his appeale against the defendant, the king may pursue it: for the appellant may by seuerall meanes leaue off, and omit to prosecute his appeale, as by Nonsuts, Release, Retrarit, or a woman by taking a husband during the sute of Appeale: and because in all those cases the sute doth cease by the act of the party plaintife, therfore in which of them soeuer it doth cease, after declaration in the appeale, the defendant shal not go at libertie, but shall be arraigned at the kings sute, vpon the same declaration, for that it doth appeare by the declaration there is a felony committed, and the yeare, day, and place, where and when the said felony was committed, and the same is not yet tried, and the law will not allow such great offences, whereof she taketh notice, to be concealed, and remaine vnpunished. And the same law is, if the appellants appeale do cease by the act of God, as if the appellant doe die: or if it cease by the act of the Law, as if the appellant be hanged: or if the appellant doe take the priuiledge of his Clergy; in which cases the defendant likewise shall be arraigned at the K. sute. But in euery araignment, which is to be at the K. sute, vpon an appeale begun by an appellant, the declaration in the same appeale must be once good and true: for if it were neuer good, and abated for that cause, the appellee shall not be arraigned at the kings sute, notwithstanding the abatement be after declaration. And therefore if the appeale be abated by misnaming of the defendant, he shall not be arraigned at the kings sute: or if it be abated by misnaming of the plaintife, or of the towne, or for want of a materiall word. And so it is, if the defendant in an appeale doe plead, that the plaintife is outlawed, or is attainted of Treason or Felony, or otherwise is disabled to maintaine an appeale: as if a woman doe bring an appeale of the death of her husband, and the defendant doth plead, that shee and her said husband were neuer accoupled in lawfull marriage, or that shee hath married another husband: or that the appeale was not commenced within the yeare and day, after the offence committed: or that the appellant hath an elder brother liuing, to whom the appeale is giuen, & not to the plaintife. And all those matters which shall be a barre to the plaintife to bring the appeale, shall also be a barre to the K. to take any aduantage against the appellee vpon the same appeale: for in all these cases it may appeare, that the appeale was commenced without cause, & grounded vpon false and insufficient matter. And the king shall be in no better condition than the appellant for the de- 1.H.6. Fitz.Cor.33. 21 E.3 18. Fitz.Cor.369. Fitz.Cor.121. 4.H.6.16. 17 Ass p 26. 11 Ass p.27. 18.E 3 35. Fitz.Cor 3. Fitz.Cor.384. 387.

defendant is arraigned vpon the declaration of the appellant: and yet it is otherwise, where the Appeale was at the first grounded vpon sufficient and true matter. But in all the cases aforesaid, though the king can take no aduantage of the Appeale against the defendant, yet he may compell him to answere to an indictment of the same felonie: for that by these pleas the defendant is not discharged of the felonie, though he be discharged of the Appeale. S. Approuers 15.17.18.19.

97 If an act which was murder, felony, or other offence, by the common law, be after made treason by stat. and then one doth offend in the same, no Appeal will lye against him therefore, for that no Appeall will lye of High or Petit Treason. And therefore whereas wilfull poysoning was wilfull murder by the common law, and after by the stat. of 22.H.8.9. the same was made high Treason, and ordained, that the offendor therein should be boyled to death: (which stat. was sithence repealed by the statute of 1.Ed.6.12.& 1.M.) yet during the said stat. of 22.H.8. in force, the sonne and heire of a man poysoned, brought an appeale against a woman for poysoning her husband, and because the offence was then high Treason, and no appeals will lye of Treason, the appeale was adiudged not maintenable. And yet by the ancient Lawes of this realme (as Bracton affirmeth) the accusor might haue pursued an appeale of high Treason against the defendant or party accused, & the defendant might haue thereunto pleaded not guilty, and waged battell with the accusor: But that Law is sithence altered.

No appeale of Treason.

M.33.H.8. Dyer 59.

Bracton, de corod 6.3.

In-

Indictments.

what an Indictment is.

AN Indictment of Treason, Felony, Trespas, or other offence, is an inquisition taken, and made by twelue men at the least, thereunto sworne, whereby they doe find and present, that such a person, of such a name, and surname, dwelling in such a place of such a County, and of such a degree, hath committed such a Treason, Murder, Rape, Burglarie, Robberie, Felony, Trespas, or other offence, at such a place, vpon such a day, and in such a manner against the Kings peace, his Crowne, and Dignitie, and contrary to the Lawes of this realme: and so it is an accusation by the Jury of the offendor, and an information of the Court, from whence they receiue their charge, of his offence, and of all such necessary circumstances thereof, and in such certaintie, that thereupon the same Court may proceede to the triall or arraignement of the party accused, if he be present, or otherwise may award Proces against him to appeare, and to make answere thereunto, if he be absent. And because this Indictment and accusation doth sometime concerne the life or member of man, sometime his liberty, sometime his fame and credite, sometime his Lands and Tenements, and some other time his Goods and Cattels: Therefore the Law hath a spetiall regard, that the proceedings therein may be effected with all sinceritie and vpright dealing, and doth carry a vigilant and watchfull eye, not onely vpon the Jurors which are returned and sworne in those Enquests, that they may be men of integritie, sufficiencie, and indifferencie, but also vpon Shirifes, and Baylifes of Liberties, who haue authoritie to returne the same Jurors: for the hath prouided by seuerall Statutes, That they shall take no Indictments by Commissions procured at their owne suite, but in their Turnes: That they shall hold their Turnes, and take Indictments but in conuenient and vsuall times: That they shall take Indictments by twelue men at the least, and then by Roll indented: That they shall take their Indictments by men of good name, and credit, and sufficient of estate: That they shall bring their Indictments and Presentments found and made in their Turnes to the Justices of Peace of the same Countie, that they may award Proces against those that be indicted, and set fines vpon them: That Jurors impanelled to make inquiries, shall be lawfully returned by Shirifes, or baylifes of Franchises, without the denomination of any other person: That Panels returned by the Shirife to make inquiries, may be reformed by the Justices: and that one Enquest may be impanelled and charged to inquire of concealements of offences made by another Enquest: So that the

St. 28. E. 3. 9.
St. 31. E. 3. 14.
St. 13. R. 2. 13.
St. 1. E. 3. 16.
Sta. 1. R. 3. 4.
Sta. 1. Ed 4. 3.
St. 11. H. 4. 9.
St. 3. H. 8 12.
Sta. 3. H. 7. 1.

Law

Law hath prouided, that Indictments may be found by men of worth, and vpon iust causes. And as touching Commissions, because in times past Shirifes of diuers Counties, by vertue of Commissions & generall Writs graunted vnto them at their owne sute, for their priuat gaine, did take diuers Enquests to indict people at their owne pleasures, and then take fines and ransomes of them to their owne vses, and after set at liberty the parties, and neuer brought the same persons so indicted before the Kings Iustices, to be deliuered there according to the forme of Law: It was therefore by a Statute made Anno 28.E.3. ordained, That all such Commissions & Writs should be from thencefoorth repealed, and that none such should be at any time after graunted. By force of which Statute the Shirife is restrained to make any inquirie by Writ or Commission: But yet by vertue of his office he may at this day make inquirie in his Turne of Felonies, obseruing such orders as by the statutes hereafter limitted be expressed.

Commissions to shirifes to take indictments.

St.28.E.3.9.

The shirife may inquire of Felonies.

St.9.H.3.36. 2 Whereas by the statute of Magna Charta, it was ordayned, That no Shirife or his Baylifs shall hold his Turne by Hundreds but twice in the yeare in a due and accustomed place, that is to say once, after Easter, and another time after the feast of Saint Michael. And because some Shirifes did hold their Turnes in Lent, when men should attend their deuotion, and other workes of charitie: and sometimes after the Guls of August, when most men be occupied in felling and carrying in their corne, contrarie to the foresaid statute of Magna Charta, therefore by a statute made Anno 31.Ed.3. it was enacted, That euery Shirife should hould his Turne yerely once within a moneth after Easter, and at another time within a moneth after the feast of Saint Michaell: and if they hold their Turne in any other manner, that then they shall lose their Turne for that time. And so if any man be indicted of Felony or other offence in the Shirifes Turne after the moneth of Easter, and Saint Michaell, the Indictment shall be void, because it is against the forme of this statute: for the words of the statute be, they shall lose their Turne for this time, which is as much, as if it had bin said, their Turne holden at this time is void. And by this statute it doth appeare when the Turne shall be holden to make a good Indictment.

St.31.E.3.14.

when the shirife shall hold his Turne.

An indictment found in an vnlawfull time

38.H.6.7.
6.H.7.2.

3 Because Shirifes did faine diuers times certaine persons to be indicted before them in their Turnes, of Felonies, and other Trespasses, and did apprehend certaine persons that were not culpable, nor lawfully indicted, and imprisoned them, to the intent to exact money from them, whereas they were not lawfully indicted by twelue men: For the preuention whereof, by the statute of West.2. made Añ 13.Ed.1. it was prouided, That Shirifes in their Turnes, and in other places where they haue authority to inquire of Trespasses by the Kings precept, or by their Office, shall cause inquisitions to be made of malefactors by twelue lawfull men at the least, which shall put their seales to such inquisitions. And the said Shirifes shall apprehend those which shal be found culpable by such inquisitions, and imprison them, as they haue vsed to do. And if they do imprison any other but such as be indicted by the inquisitions aforesaid, they which be imprisoned shall haue their action of false imprisonment against the Shirife, as they might haue against any other person that should imprison them without warrant: and what is said of the Shirife, shall be obserued of euery Baylife of Libertie.

St.13.E.1.13

Shirifes shall inquire by xij. lawfull men at the least.

4 Because the said Inquisitions taken by the Shirif should not be conceiled, imbesilled, or mistaken, but that the truth of them should be shewed to the Justices, when they come to deliuer the Gaole, Therefore by the Statute of An 1.E.3. it was established, That Shirifes and Bayliffes of Franchises, and all others who take Indictments at their Turnes, or elsewhere that Indictments should be made, shall take those Indictments by Roll indented, whereof one part shall remaine with the Indictors, and the other with him that doth take the Enquest: So that the Indictments shall not be imbesilled, & that one of the Enquest may shew one part of the Indenture to the Justices, when they shall come to make deliuerance. This Statute by generall words doth extend to Stewards in Leets, and all others. 2 an. 1. E. 3. c. 16.

Indictments by roll indented before the Shirife.

5 For that great inconueniences and Periuries were in seuerall Counties of this Realme, by false verdicts giuen in inquisitions and inquiries before Shirifes in their Turnes, by persons of no substance, nor behauiour, nor fearing God, nor respecting the world: by which meanes many persons of seuerall parts of this Realme, by the inticement and persuasion of their enemies, were wrongfully indicted: and some others, which ought to haue beene indicted by such procurement, were spared: For the auoiding whereof, by a Statute made Anno 1.R.3. it was enacted, That no Bayly, or other Officer shall returne in any pannell any such person in any Countie within this Realme of England, to be taken or put in or vpon any such inquirie in any of the said Turnes, but such as be of good name and fame, and haue lands and tenements of freehold within the same County, to the yearely value of twenty shillings at the least, or otherwise Lands and Tenements, holden by the custome of the manor, commonly called Copyhold, within the said Counties, to the yearely value of six and twenty shillings eight pence at the least. And if any Bayly or other Officer within the said Counties shall returne or impanell any person contrary to this ordinance, he shall lose for euery person so impannelled or returned, not being of the sufficiencie aforesaid, so often as he shall offend, forty shillings, and the shirife other forty shillings, whereof the one halfe shall be to the King, and the other to such as will sue for the same. And euery person that will sue for himselfe, shall haue seuerall actions of Debt at the common Law, as well against the Shirife, as against the Bayly. And like and the same Proces shall be had and vsed in those actions, as be had and vsed in other actions at the common Law, and no Protection or Essoine shall be allowed therein: and euery such Indictment otherwise taken before the Shirife in his Turne, shall be void: which foresaid Statutes were made, to auoid the corrupt and euill demeanor of Shirifes and other officers, which take Indictments in Shirifes Turnes and Leets. 2 an. 1. R. 3. c. 4.

Of what sufficiency Jurors returned in the Shirifes Turne, shalbe.

6 Because diuers persons were greatly vexed and troubled by the inordinat and immeasurable Indictments and Presentments, as well of Felonis and Trespalles, as of other things which were taken and vsed before shirifes, their Undershirifes, Clerkes, Bayliffes, and other Ministers at their Turnes or Law-daies holden before them seuerally in their Counties: Which indictments and Presentments were often affirmed by Jurors, hauing no conscience, nor freehold, and small wealth, and sometime by the menial seruants and Bayliffes of the said Shirifes or Undershirifes. By reason of which Indictments and Presentments many people were attached, arrested, and put in prison by the said Shirifes, their Undershirifes, Clerkes, Bayliffes, and Mini-

Ministers, and then they were constrained to pay vnto them great fines and ransomes, to deliuer them out of prison: and also the said Indictments and Presentments were imbesilled, withholden, and concealed. And further, the said Shirifes and other Officers had amongst themselues the awarding of Proces vpon such Indictments when they were found, and the assessing of fines: So that all the corrupt misdemeanors sought to be reformed by the before specified Statutes, were little or nothing amended. And therefore for the reformation of the enormities aforesaid, by a Statute made Anno 1. Ed. 4. it was ordained, That vpon all Indictments and presentments which shall bee taken before any of the Shirifes of Counties for the time being, their Vndershirifes, Clerkes, Baylifes, or Ministers at their Turnes, or Law-daies, they nor any of them shall haue power or authority to arrest, attach, or put in prison, or to leuy any fines or amerciaments of any person or persons so indicted or presented, by reason or colour of any such Indictment or Presentment taken before them, or any of them, or to leuy or take of any such person or persons so indicted or presented, any fine or ransome. But the said Shirifes, Vndershirifes, Baylifes, or Ministers shall bring, present, and deliuer all such Indictments and Presentments taken before them, or any of them in their Turnes, or Law-daies, to the Iustices of the Peace, at their next Session of the Peace, which shalbe holden in the Countie or Counties where such indictments and presentments shalbe taken. And if any of the said Shirifes, Vndershirifes, Clerkes, Baylifes, or Ministers doe not bring, deliuer, or present all such indictments or presentments so taken before them and euery of them in their Turnes, or Law-daies, as is aforesaid, to such Sessions of the peace, before the said Iustices: then the said Shirifes, Vndershirifes, Clerkes, Baylifes, and their Ministers, and euery of them which shall faile of the bringing, deliuering, or presenting of such Indictments or Presentments, shal forfeit to the king forty pounds, so often as they or any of them shall doe the contrarie. And the said Iustices of peace shal haue power and authority to award proces vpon such Indictments and Presentments as the Law doth require, and in such like manner, as if the said Indictments and Presentments had bin taken before the said Iustices of Peace in the same County or Counties: and also to arraigne and deliuer all person and persons so indicted and presented, before the said Shirifes, Vndershirifes, their Clerkes, Baylifes, or Ministers, or any of them in their Turnes or Lawdaies, and to set such fine vpon euery person or persons indicted or presented of Trespas, as it shall seeme good to their discretions. And the Estreats of the same fines and amerciaments shall be inrolled, and by Indenture deliuered to the said Shirifes, Vndershirifs, Clerks, or Ministers, or to some of them, to the vse and profit of him which was shirife of the County at the time of the taking of such indictments or presentments. And if any of the said Shirifes, Vndershirifes, Clerkes, Bailifes, or ministers shall cause to be arrested, attached, or put in prison, or shall cause to be raised or taken any fine or ransome, or leuy any amerciament of any person or persons so indicted or presented, by reason or colour of any such indictment or presentment before him taken at his foresaid Turne, or Law-day, before they haue proces from the said Iustices of Peace, or Estreates deliuered out of the said Indictments or presentments so brought, deliuered, or presented vnto them: then the shirifes which doe so shall forfeit an hundred pounds, whereof the one moitie shalbe imployed towards the expences of the kings house, and the other to the party or parties that shall be endammaged: And he or they shall haue an action of Debt at the common law, and like proces as is vsed in an action

Stat. 1. Ed. 4. 3.

Indictments taken in the Shirifes Turne shall be deliuered to the Iustice of peace.

Proces vpon Indictments awarded by Iustices of peace.

of Debt at the common Law, wherein the defendants shall not be essoined, wage their law, nor have any protection. But this Ordinance shall not extend or be preiudiciall to the Shirifes of the City of London, touching Indictments or Presentments to be taken before them in the said Citie: Neither shall this Ordinance extend or be preiudiciall to any person or persons that have graunt of any fines, or other amerciaments, by any letters Patents of the king, or of any of his progenitors or predecessors, bearing date before the 1. day of December next after the beginning of this Parliament, being Añ Dom. 1461.

Indictments in London.

B This statute doth give authority to Iustices of peace to award proces vpon all Indictments taken in the Shirifes Turne, when they be brought and deliuered vnto them: But yet it is alwaies intended, that those Indictments shall be lawfull, and containe matter whereof the Shirife hath iurisdiction in his Turne, and power to make inquirie: For if the Shirife in his Turne will make inquirie of the statute of Lineries, or indict one who did feloniously rauish a woman, or such other matters, which be not inquirable in the Shirifes Turne, although he wil bring the indictments before the Iu. of peace, and deliuer them according to the forsaid stat. of 1. E. 4. yet they ought not to award proces vpon them, for they were taken coram non iudice, and so void.

The shirife inquiring of things not inquirable in his Turne.

4. Ed. 4. 31. 8. Ed. 4. 5.

7 And for that Enquests were sometimes taken, without being duely returned by the Shirife, of such persons as were outlawed before Iustices of Record, and of some such as were fled to sanctuary for Felony or Treason to have refuge, by whom sometimes not only offendors were indicted, but also seuerall of the kings liege people not guiltie, by the conspiracie, abbetment, and false practise of others, for their owne speciall aduantage and priuat gaine: for the auoiding whereof there was a statute made Anno 11. H. 4. which doth enact, That no indictment shall be made by any such persons, but by enquests of the kings liege people, as it hath bin vsed in the time of the kings progenitors, duly returned by Shirifes, or bailifes of Franchises, without any maner of denomination before made to the said Shirife, or bailifes of Franchises, by any person of the names of those who shall be impanelled by him, vnlesse it be by the officers of the said Shirifes, or bailifes of Franchises, known or sworne thereunto, and other ministers to whom it appertaineth by the law of England to make the same. And if any indictment be made in any point to the contrary, the same shall be void, reuoked, and of no force.

2. 11. H. 4. 9.

Iurors in indictments shal be returned by the shirife without denomination.

B According to this statute, some haue bin discharged of their Indictments, because certaine of the Inditors were before that outlawed of Felony. This statute of Anno 11. H. 4. is altered by the next statute of Anno 3. H. 8. for so much as only doth concerne denomination to be made by the Iustices, for the reformation of Panels returned before them by the Shirifes, when the said Iustices will haue the same Panels reformed: But for all the residue it continueth in force.

11. H. 4. 4. 3. H. 8. 12

8 The whole authority of returning of Enquests to make Indictments, without the denomination of any person before made, being by force of the forsaid statute of 11. H. 4. in Shirifes and bailifes of Franchises, seuerall great extortions and oppressions were done in diuers Counties of this Realme by subtilty and vntrue demeanor of shirifes and their ministers to many persons by making and returning at euery Sessions holden within the said Counties for

for the body of the shire, names of such persons, as for the singular gains of the said Shirifes and bailifes would be wilfully forsworne, by the finifter labor of the said Shirifes and their minifters: By reason whereof, by their couin and falsehod, many true and substantiall persons were diuers times wrongfully indicted of Murthers, Felonies, and other misbehauiours, to the vtter losse of their liues, goods, and lands: and sometime also by the labor of the said Shirifs great Felonies and Murthers were concealed, and not presented by the said persons, partially returned by the same shirifs, or their minifters, to the intent to compell the offendors to make fines, and giue rewards to the said Shirifes and their minifters: For the preuention of which enormities, by a stat. made
Stat. 3. H. 8. 12 Anno 3. H. 8. it was established, That all panels to be returned, which be not at the sute of any party, that shall be made and put in by euery shirife, and their minifters before any J. of Gaole deliuery, or J. of Peace (whereof one to be of the Quorum) in their open Sessions to inquire for the king, shalbe reformed by putting to and taking out of the names of the persons which so be impannelled by euery shirife and their minifters, by the discretion of the same Justices before whom such panels shall be returned. And the same Justice and Justices shall commaund euery shirife, and their minifters in his absence, to put other persons in the same panels by their discretions. And the same panels so reformed by the said Justices, be good and lawfull. And if any shirife, or any of their minifters at any time do not returne the same panels so reformed, then euery such shirife or minifter so offending for euery such offence shall forfeit 10 l. the one halfe to the king, and the other to him or them that will sue for the same by action of Debt at the common law, or Bill &c. wherin no Wl. E. or P. shalbe allowed: and the kings pardon shall be no barre against the party or parties that shall sue the same.

Panels for indictments reformed by the Justices

9 It is to be thought, that by force of the statutes before rehearsed sufficient, honest, and indifferent Jurors were returned by the shirifes of Counties, or that the panels by them returned were reformed by the Justices; so that if any defect were committed in Indictments, or in concealing of offences, or offendors, then the same was in the Jury, which were charged for the body of the shire to make inquiris: for the searching forth of the truth whereof, and for the punishment of the said offendors according to their demerites, by a stat. made
St. 3. H. 7. 14 Añ 3. H. 7. it was ordained, That the Justices of peace of euery shire of this realm, for the time being, may do to take by their discretion an enquest, where of euery man shall haue lands and tenements to the yearely value of forty shillings at the least, to inquire of the concealements of other Enquests taken before them, and before other, of such matters and offences as are to be inquired and presented before Justices of peace, wherof complaint shalbe made by Bill, or Bils, as well within Franchise, as without: and if any such concealement be found of any Enquest had or made within the yeare after the same concealement, euery person of the same Enquest shal be amerced for the same concealements, by the discretion of the same Justices of peace, the said amerciaments to be assessed in plene Sessions.

Enquest to inquire of concealments.

10 For as much as seuerall persons vpon great grounds of vehement suspitions, as well of high Treasons, petit Treasons, and misprision of Treason, as of Murthers, were many times sent for from diuers Shires and places of this Realme, and other the Kings Dominions, to the Kings great charges, to be examined before the Kings Councell vpon their offences, to the

intent that conuiction or declaration of such persons should spedily ensue, as the merits of their cases should require: And albeit that after great trauaile taken in the examination of such persons, it appeared to the said Councell, by confession, witnesse, or vehement suspect, that such persons were rather guiltie of such offences whereof they were examined, then otherwise, yet neuerthelesse, such offendors so examined by the course of the common Lawes of this Realme, must be indicted within the Shires or places where they committed their offences, and also tried by the Inhabitants & Freholders of such Shires and places, although by their confessions, or by sufficient witnesse, their offences were certainly knowne to the Kings Councell: By reason whereof, besides the trauaile of the Kings Councell, the king was often put to great charges, in remaunding such persons to the Countries where they offended, there to bee indicted and tried of their offences. And sometimes the Inhabitants and Freholders of the Shires or places where such offences were done, were compelled to appeare out of their Shires or places for such causes, to their great charges, for the triall or declaration of such offences. And sometime by occasion of the charges for remaunding such offendors to be indicted and tried by the course of the common Law, such offendors did lye still in prison, and were forgotten: whereby many times, by the helpe of their confederats, they escaped vnpunished, to the great courage and euill example of euill doers. For the reformation whereof, by a statute made Anno 33. H. 8. it was enacted, That if any person or persons, being examined before the Kings Councell, or three of them, vpon any manner of Treasons, misprision of Treasons, or Murthers, do confesse any such offences, or that the said Councell, or three of them, vpon such examination shall thinke any person so examined to be vehemently suspected of any Treason, misprision of Treason, or Murther: then in euery such case, by the Kings commaundement, his Maiesties Commission of Oyer and Terminer vnder his great Seale shall be made by the Chauncellor of England, to such persons, and to such Shires and places as shall be named and appointed by the Kings Highnesse, for the spedy triall, conuiction, or deliuerance of such offendors: Which Commissioners shall haue authoritie to inquire, heare, and determine all such Treasons, misprisions of Treasons, and Murthers, within the Shires and places limitted by their Commission, by such good and lawfull persons as shall be returned before them by the Shirife, or his ministers, or any other, hauing power to returne Writs and Proces, for that purpose, in whatsoeuer other Shire or place, within the Kings Dominions, or without, such offences of treasons, misprisions of Treasons, or murthers so examined, were done or committed: & that in such cases no challenge for the Shire or Hundred shall be allowed. After which Statute there was a Statute made Anno 1. & 2. Ph. & Ma. whereby it was ordained, That trials to be hereafter had, awarded, or made for any Treason, shall be had and vsed only according to the due order and course of the common lawes of this Realm, and not otherwise.

33. H. 8. c. 23.

Indictments and trials where the king will.

1. & 2. Ph. & Ma.

Triall of Treason.

B The foresaid stat. of 33. H. 8. is repealed by the said stat. of 1. & 2. Ph. & M. touching the indictment and triall of Traitors: for they are to be indicted and tried in the county where the offence was committed, or by freholders of that county, according the course of the common law, notwithstanding that they haue confessed their offences before ij. of the K. Councell. But for the triall of Murther the said stat. of 33. H. 8. doth continue in force.

12. El Dyer fol. 286.

11 Forasmuch as some doubts and questions were moued, whether certaine kinds of treasons, misprisions and concealements of treasons committed out of the Realme of England, and other the Kings dominions, can or may by the common Lawes of this Realme be enquired of, heard, and determined within the realme of England: Therefore for a plaine order, remedie, and declaration therein to be had, by a statute made Anñ 35. H. 8. it was enacted, That all manner of offences being already made, or declared, or hereafter to be made, or declared by any of the Lawes and Statutes of this realme to be treasons, misprisions of treasons, or concealments of treasons, and done, perpetrated, or committed, or hereafter to be done, perpetrated, or committed by any person or persons out of this realme of England, shall be from henceforth inquired of, heard, and determined before the Kings Iustices of his Bench, for pleas to be holden before himselfe, by good and lawfull men of the same shire, where the said Bench shal sit, and be kept: Or else before such commissioners, and in such shire of the realm as shalbe assigned by the kings commission, and by good and lawfull men of the same shire, in like manner and forme, to al intents and purposes, as if such treasons, misprisions of treasons, or concealements of treasons had beene done and committed within the same shire, where they shall be inquired of, heard, and determined, as is aforesaid. But if any peere of this realme shall be indicted of any such treasons, or &c. he shall haue his triall by his Peeres.

35. H. 8. 2. Indictments and trialls of Treasons committed out of this Realme.

If any subiect of this Realme being beyond the sea, doth practise with the Prince or Gouernour of another countrey to inuade this realme of England with a great power, and in his practise doth declare by what meanes, how, and in what place the same may be done; and though there be no such inuasion, yet this practise is high treason: for an inuasion with power may tend to the destruction or great perill of the person of the King. And this offence shall bee tried according to the foresaid statute of 35. H. 8. which statute doth remaine in force, and is not repealed by the before rehearsed Statute of 1. & 2. Phil. & M. 10.

B

13. El. Di. 298 Treason practised beyond the sea.

12 For the conseruation, tranquility, and peace of the Kings liege people as well within the County Palantine of Lancaster, as of other his liege people out of the said Countie, within the Realme of England, by a statute made Anñ 33. H. 6. it was established, That euery Indictment to be taken before any of the Kings Iustices in the County Palantine of Lancaster, or before anie Sheriffe in his Turne in the said Countie, whereby any person or persons be supposed by the same Indictment to be, or to haue beene inhabiting or conuersant out of the said Countie, and within any other Countie within England, shall be taken by verdict of twelue men, whereof euery of them, or some other to their vse, shall haue Lands and Tenements to the yeerely value of an hundred shillings, and no processe shal be made out of such Indictment, before it be duely examined before the Iustices within the said County, whether the said Indictors and euery of them, at the time of such Indictment taken, had lands and tenements within the said Countie of Lancaster, to the yeerely value of an hundred shillings, aboue all charges. And if it be found, that eueric of the said Indictors at the time of the saide Indictment taken had not lands, &c. to the saide yeerely value of 100. shillings, then the Indictment, as to such persons so indicted, supposed by the saide Indictment to be inhabiting or conuersant out of the said County of Lancaster, shall be void.

33. H. 6. 2. Indictment in the Countie of Lancaster of a forraine.

13 And

Indictment in a forrein county of a Lancashire man.

13 And by the same Statute of Anno 33. H. 6. it was likewise enacted, Stat. 33. H. 6. 2. That everie Indictment from henceforth to be taken within anie Countie of the said Realme, and out of the said County of Lancaster, before anie Justice, or the sheriffe in his Turne, whereby anie person or persons supposed by the same indictment to be, or to have bin conversant or inhabiting within the said County of Lancaster, and without such county where such Indictment shall happen to be taken, shall be taken by verdict of twelue men, whereof euery of them, or some other person or persons to their owne vses, shall have lands and tenements to the value of 100. shillings. And that no processe be made out of any such indictments, before it be duly examined & inquired before the Kings Justices, having power to award any processe upon such Indictments, whether the saide Indictors and every of them, at the time of such indictments taken, or any other person or persons to their vse, had any lands or tenements, to the yerely value of 100. shillings within the same countie above all charges, where such Indictments happen to be taken. And if it be found before the King, or any of his Justices, that the said Indictors, or any of them, had not at the time of such indictment taken, nor that none other to their vse had landes and tenements to the yerely value of 100. shillings, that then the saide Indictment, as to any such person or persons supposed by the said Indictment to be, or to have bene inhabitants or conversant within the said County of Lancaster, shall be void, and of none effect.

14 Though by the rules of the Common Lawe euery offendor shall be tried in that Countie where in he is indicted, and he shall be both indicted and tried in the Countie where he doth commit the offence whereof he is so indicted: yet for the preseruation of mans life, and condignely to punish such persons as vnlawfully and wilfully murther, slay, or destroy men, and to preuent the practise of those theeues and robbers, that doe steale or robbe in one Countie, and conuey their spoile or part thereof to some of their adherents knowing thereof in an other Countie, by a Statute made Anno 2. & 3. Ed. 6. it was e- Stat. 2. & 3. Ed. 6. 24. nacted, That where any person or persons shall be feloniously stricken, or poi-

A man stricken or poisoned in one county, dieth in another.

soned in one countie, and die of the same stroke or poysoning in an other countie, that then an Indictment found by Iurors of the countie where the death shall happen (whether it shall be found before the Coroner vpon the sight of any such dead body, or before the Justices of Peace, or any other Justices, or Commissioners, which shall have authoritie to enquire of such offences) shall be as good, and effectuall in Lawe, as if the stroke or poysoning had bene done or committed in the same Countie where the partie shall die, or where such Indictment shall be so found. And by the same Statute it was further ordained, That where any murder or felony shall be committed and done in one county, and another person or moe shall be accessarie or accessaries in anie manner wise to any such murder or felonie in anie other countie, that then an

Indictment of an accessary in one countie, to an offece done in another.

Indictment found or taken against such accessarie or accessaries, vpon the circumstance of such matter before the Justices of Peace, or other Justices or Commissioners, to inquire of felonies in the Countie where such offences of accessarie or accessaries in any maner of wise shall be committed or done, shall be as good and effectuall in the Law, as if the principall offence had bene committed or done within the same Countie where the same Indictment against such accessarie shall be found.

Before

B

6.H.7.10. 7 H.7.8. Before which ſtatute made, the maner was, to carry the body of the offendor to the Countie where the firſt offence was committed, and there to indict and trie him. A man was indicted in the Countie of Middleſex, for that hee in
Fitz.Coro.33. the ſame Countie procured an other man to kill a third man in the Countie of Eſſex, by force whereof hee did kill him accordingly. This was a good and ſufficient Indictment: for hee was indicted in the Countie where hee committed
Kel.fol.67. his offence, viz. the procurement. And if a man being in one Countie, doth procure another to kill a third perſon in an other countie, whereby he doth kill him accordingly, in this caſe a Jury of the county where the murder was committed, may indict this procuror as acceſſory, for that this murder was begun by his procurement.

Stat. 4.H.4.12. 15 By the Statute of Anno 4.H.4. it was ordained, That the words Inſidiatores viarum, & Depopulatores agrorum ſhall not be from henceforth vſed, or put in Indictments, Arraignements, Appeales, nor other impeachments: Nor that by force of any ſuch word, or terme, any of the kings people ſhalbe arraigned, appealed, impeached, nor grieued before any ſecular Judge. But the Juſtices may take and receiue before them Indictments, Arraignements, and Appeales of felonie, containing in them the effect of the ſaid words and termes, if anie ſhall be hereafter indicted, arraigned, or appealed before them of anie ſuch felonies. And if in time to come anie Clarkes ſhall be indicted, arraigned, or appealed, & their indictments, arraignements, or appeales doe purport the effect of the ſaide wordes, or other words of the like effect; notwithſtanding, they ſhall enioy the priuiledge of their Clergie. Inſidiatores viarum, depopulatores agrorum.

Stat. 37.H.8.8 16 By a ſtatute made Anno 37. H.8. the words vi et armis, viz. cum baculis, cultellis, arcubus, et ſagittis, or ſuch other like (before time commonly vſed and compriſed in all Indictments and Inquiſitions of Treaſon, Murder, Felonie, Treſpaſſe, and other offences) ſhall not of neceſſitie be put or compriſed in any Inquiſition, or Indictment: Nor the party being indicted of any offence, ſhall take aduantage by Writ of Error, Plea, or otherwiſe, to auoide any ſuch Inquiſition or Indictment, for that the ſaide wordes or any of them ſhall not be put in the ſaid Inquiſition or Indictment: But the ſaid Inquiſitions or Indictments lacking the foreſaide words, or any of them, ſhall be taken to all intents as good and effectuall in Lawe, as if the ſaid words were in them. Words not neceſſarie in Indictments.

Stat.4.H.4.3. Stat.37.H.8.8 17 By theſe two laſt Statutes it doth appeare, that the Realme was offended becauſe Indictments were ſtuffed with more wordes than the offence required, and that of purpoſe to aggrauate the offence more than it was grieuous in it ſelfe. For the circumſtances of euery offence doe augment, or diminiſh it, according to the qualities thereof. And therefore it is requiſite that there ſhall be no further circumſtance put in Indictments, more than the fact, ſauing that which is true, leſt Periurie ſhould inſue, and Juſtice be ſubuerted thereby: for ſuch wordes bee not wordes of forme, but as materiall and neceſſarie, as Proditorie, or Felonicè, which ought to be put in euery indictment of Treaſon, or Felonie, or otherwiſe the Indictment is not good, for they doe expreſſe the intent wherewith the fact was committed, which maketh the offence to be knowne. As, one was indicted, That hee tooke his father
Fitz. Indict 3. being ſicke, and carried him againſt his will from towne to towne in a great froſt, whereof hee died: and for that this word Felonicè was not in the indict-
ment, No more ſhall be in an indictment than is true. Felonicè omitted in an indictment of felonie.

ment, it was adiudged void. And if one be indicted of murder, or manslaughter, there must be of necessitie in the indictment a stroke supposed, viz. tali die & anno felonicè & ex malitia præcogitata interfecit & murdrauit, &c. without saying percussit. And if a man be indicted of Piracie, there ought to be in the indictment not onely this word felonicè, but also this word piraticè. 1.M Dl.99

Piracie in an indictment. Stamf 114.

Where a verdict shalbe an indictment.

18 In an Action of Trespas brought for the taking away of a mans wife, and the goods of the husband, the defendant pleaded not guilty, and was found by verdict guilty: in this case the same verdict shal serue as an indictmẽt for the B. and the defendant shalbe thereupon arraigned of felony. And in like sort, in an Action of Trespasse brought for the taking away of his goodes, the defendant pleaded not guiltie, and it was found by verdict, that the defendant with other his companions did steale those goods from the plaintife: whereupon the defendant was awarded presently to answer to the felonie at the Kings suit. But it was then affirmed, that if the Enquest had passed in anie other place sauing the Kings Bench, nothing ought to haue bene done touching the felonie, vntill the Eire of the Justices. 18.Ed.3.72 Fit. Cor.122 13.Ass.pla.6 Fitz.Indict.31

The sheriffes returne no indictment.

19 If the Sherife returne a Rescous made vnto him of one which he did arrest for felony, and was taken out of his possession: In this case notwithstanding this returne be matter of record, yet it is not sufficient to serue as an indictment against him that made the Rescous. And the same Lawe is, if the sherife returne, that the party arrested did escape from him. And the reason of the difference betweene the two former cases and these, is, for that in the first cases there is a verdict of twelue men, which will alwaies serue for the king, if they containe matter that will intitle him. For the king is euer present in court, and if the parties in pleading, or the Iurie in their verdict, do disclose anie matter which shall intitle the King, the Court shall adiudge for the King, though hee be none of the parties to the Action. But in the other cals of the Sherifes returne, it is not so: for the Sherifes returne will rather attaint him, than put him to answer, for that it is a common rule, that against the sherifes returne there is no Trauerse, nor answer. S. Breaking of prison 7. 1.H.7.6. 2.Ed.3.2.

The peare, day, and place, necessary in an indictment.

Certaintie in the day.

20 An Indictment which is vncertaine is not good, and therefore to make a good Indictment, it is necessary to put in the yere, day, and place, when, and where the felonie was committed: And it ought to bee such a date as is not doubtfull, nor vncertaine: for if it be so, it is as much as if no day had beene put in. And therefore if a man be indicted, that hee committed felonie in the feast of Saint Paul, without addition, and there be two feasts of Saint Paul in the yeare, this is an vncertaine indictment, and so void. A man was indicted, for that the first day of May, and the fourth day of May, at Dale he did beate and wound I.S. and then and there did take and steale from him feloniously, a white horse: and this was adiudged a void indictment, for it is vncertaine whether these words adtunc & ibidem shall haue relation, for a felonie can be committed but at one time and place. 25.Ed.3 43 8.H.5.8. 2.H.7.7. 3.H.7.5. 5.Ed.6.Di.69 2.H.7.9.

Indictment certaine in the matter.

21 An Indictment ought to be certaine not onely in the day, but also in the matter. As if one be indicted for apprehending of a man for suspition of felonie, and that hee did after voluntarily and feloniously let him go at liberty, and the indictment doth not shew in certainty for suspition of what felonie he was taken, this is a void indictment. 8.Ed.4.2.

22 If

30.H.6.21 22 If a man be indicted as accessorie to foure men, in this maner, viz. that he knowing those foure to haue committed felony, did receiue them feloniously at D. and the indictment doth not shew which of them he receiued, this indictment is void for the incertainty: for the indictment should haue beene, that he did receiue them all foure by name, or three, two, or one of them by name.

Indictments certaine in the persons receiued.

49.H.6.15. 31.H.8. Dyer 46. 4.& 5.P.& M. Dyer 164 33.H.8. Dyer 50. 23 If an indictment be, Ad magnam curiam cum leta tentam tali die & anno extitit præsentatum quod &c. this is a void indictment, for that it is vncertaine to which of those courts a man will referre the presentment, whether to the Leete, or to the Court Baron. And so must the words of an indictment bee certaine in euery addition of the county, towne, place, time, person, mysterie, &c. and in an Alias dictus &c. and in the placing thereof.

Indictment vncertaine at which court.

Indictment vncertaine in the addition.

9h.Indict.10. 24 If a man be indicted, that he made C.S. by Alchimy, like the money of our soueraigne lord the K. and it is not alledged in the indictment what mony it was, viz. pence, groats, or, &c. this is a void indictment for the vncertaintie.

Indictment for making of money.

22.Ass.pla.73 29.Ass.pla.45 Stat.25.Ed.3. 25 If a man be indicted, that he is a common euill doer, or a common thiefe, without shewing specially in what thing, this is a void indictment, because it is vncertaine in what things the transgressor hath offended. By the statute of Anno 25.Ed.3.9. pro Clero, it is ordained, That no Ordinarie, or any minister of his, shall be indicted of extortion or oppression generally: but it must be declared and put in certaine in the indictment, in what thing, of what, and in what manner the said Ordinaries or their Ministers haue done extortion and oppression: or otherwise the saide Ordinaries and their Ministers shall not be impeached by the kings Iustices for the said indictment.

A common thiefe.

Indictment of the Ordinarie must be certaine.

9.Ed.4.1. 26 If a man be indicted for the stealing of the goods of the foresaid A. where there is no such A. before named in the indictment, this is a void indictment: for that words subsequent can not haue relation to words precedent, where there be none such.

The foresaid A. where none is named.

22.Ass.pla.94 27 No man is bound to answer to an appeale of felony touching the death of a man, if the appellant doe not name the name of the party that was killed. But a man may be indicted quod interfecit quendam hominem ignotum: for he that is slaine may be so mangled in the face, or was dwelling so far off, that he cannot be knowne by name. And in like sort a man may be indicted for the stealing of the goodes cuiusdam hominis ignoti. And the reason is, for that this indictment is not the suite of the owner of the goods, but is the Kings suit, who is to haue the goods, if no man do claime them: And it were not expedient that the king should lose the goods, for that the name of the owner is not there knowne, which owner peraduenture for feare will not claime the goodes as his owne, or who (it may be) is dwelling in an other County, far distant from the place where the goodes were stolne: so that the Country where the goodes were stolne, doth neither know his name or surname. And therefore for the Kings aduantage, and for to print a greater terrour into the hearts of malefactors, to commit such hainous crimes, such indictments be allowed good. And yet a man being indicted for stealing of the coat of a dead man vnknowne, the indictment was not allowed: for it was holden, that the executors of the dead shall haue this coat, or the Ordinary, or else it shall be deliuered to the church, or otherwise be imployed to charitable vses. Quære differentiam.

2.Ed.3.16. 9.H.6.64. 1.Ass.pla.7.

Pl.Indict.12. 1.M.Dier 96. 11.Eliz. Dier. 285.

Indictment for the killing of a man vnknowne.

Indictment for stealing the goods of a man vnknowne.

Fin.Indict. 29

28 If

The goods of a chappell or church.

28 If a man be indicted Quod bona Capellæ in cuſtodia &c. aut bona domus & eccleſiæ tempore vacationis felonicè furatus eſt &c. this is a good indictment: and yet in this caſe there is no owner here, but becauſe the propertie can be in no other, neither can it be otherwiſe done, for that cauſe the Indictment is allowed to be good. 7.Ed.4.14 9.Ed.4.33

An indictmẽt depending vpon an argument or implication.

29 An Indictment the force whereof doth depend vpon an argument, or implication, is not good: As if one be indicted, Quod felonicè abduxit vnum equum, he did feloniouſly leade away a horſe: this is not a good Indictment without ſaying felonicè cepit & abduxit, viz. that he feloniouſly take and led him away, for it may be that the horſe was lent him, and ſo hee led him away, in which caſe then it is no felonie: and yet in theſe words felonicè abduxit is implied, that he did ſteale the horſe. 2.Ed.3.1 Fiz.Indict.8 Co.l.4.42.44

Furatus eſt without felonicè, Murdravit.

30 If an Indictment be, Quod furatus eſt vnum equum, viz. that hee did ſteale one horſe, and ſaith not felonicè, this is a void indictment, though felonicè be implied in theſe words, furatus eſt. And in like ſort it is, if a man be indicted of a rape, and the indictment is, quod eam carnaliter cognouit, without vſing the word rapuit, this is no good indictment, and yet carnaliter cognouit is an argument of a rape, though it may be that he did carnally know her by her owne will and conſent, and ſo not raviſh her. And in an Indictment of murder, if theſe words be in the indictment, ex malitia præcogitata, & voluntariè, & felonicè interfecit, and not this word murdravit, it ſhall not be adiudged a murder, but homicide. 18.Ed.4.10 9.Ed.4.26 9.Eliz. Dyer 262 13 Eliz. Dyer 304

Murdravit.

Indictment before Juſt. of peace.

31 If an indictment of felonie be found before A.B. Juſtice of peace, without making mention of anie commiſſion that they have to heare and determine felonies, this is no good indictment: for by the Statute of Anno 18.Ed. 3. they have power by commiſſion to heare and determine felonies, and not by vertue of their office only, and yet it is to be implied, that all Juſtices of peace by force of their commiſſion, have authoritie to heare and determine felonies: And they have authoritie to inquire of murder, for that it is felonie. Sur.18.E.3.2 5.H.6.Di.69

Maior of London Coroner.

32 If one be indicted vpon the ſight of the bodie before the Maior of London, without adding thereunto this word Coronatore, this is no good indictment: and yet he that is Maior of London is alwaies Coroner, and ſo by implication it may be taken. But ſuch an indictment is not good, which muſt haue an argument or implication. 22.H.4.12

Indictment of the recett of a felon, as acceſſorie.

Indictment of the recett of one attainted of felonie.

33 If one be indicted as acceſſorie for the receit of a felon, there muſt in the indictment mention be made of the maner of the felony, and that the partie indicted knowing the principall to haue committed ſuch a felonie, did feloniouſly receiue him. But it is otherwiſe, if a man receiue one attainted of felonie in the ſame Countie where the felonie was committed: for in that caſe, if he be indicted of the receit of the felon, mention néede not be made of the manner of the felonie, becauſe it is ſufficient that the partie attainted of felonie was receiued, though the attainder be erronious: ſeeing it is not lawfull for anie to receiue him, for euerie perſon is bound to take notice of this Attainder which is in the ſame countie where hée dwelleth. But it is otherwiſe, if the attainder were in a forrein county, for there none be bound to take knowledge thereof but the Inhabitants of the ſame Countie, and therefore in that caſe, notwith- 2.H.6.42 8.Ed.4.3 Fitz.Cor.377

withstanding the attainder, mention ought to be made of the maner of the felony.

25.Ed.3.39. 27.Ass.p.69. 9.H.4.10. 34 It is no good indictment of an accessory, to say, that the said accessory did receive the goods stolen, without affirming that he received the felon, for he is not accessory to a felony, which doth receive goods stolne only, except he doth also receive the felon. S. Principall and Accessorie 14. & 17. Receit of the goods stolne and Felon.

18.E.4.10. 2.H.7.7. 6.H.7.4 35 Although in the cases aforesaid, the indictments be void touching felony, yet diuers of them shall serue as indictments of trespas, to cause the partie offending to make a fine, especially such indictments that doe not want any certaintie, but onely words which make the offence felony. And in those indictments which do want certainty, the Justices may award a Scire facias against the indictors to amend that which wanteth. And so may the Justices of the Kings Bench, if the indictment be taken in the same county where the said bench is sitting. Or otherwise, if the indictment were taken before the shirife, coroner, or Justice of peace, the court may direct a writ to the said shirife, coroner, or Justice of peace, to know if they haue any othe indictment before them. Indictments void to one purpose, will serue to another.

8.H.5.8.

2.E.3.1.& 18

Fi Indict. 27. 36 If the court vpon the arraignment of a prisoner, doth discharge him of the indictment, paying his fees, because at that time they do thinke the indictment to be insufficient, yet if after at another day, or time, they alter their opinion, then they may send to the Gaoler, and charge him, that the prisoner shall not depart forth of Prison, but stand againe at his deliuerance, notwithstanding their iudgement before if so be that the iudgement be not entered: And this is by the Kings prerogatiue, who is party to the sute. Prisoner discharged, retained in prison.

37 And seeing I haue treated first of Appeales, and now of Indictments, it is to be considered, what differences there be betweene them. In an appeale of the death of a man, the name of him which is dead must be contayned, or otherwise it is not good. And therefore there lyeth no appeale of the death of an Infant in his mothers wombe, for that Infant had neither name nor sirname: And moreouer that manner of killing is no Felonie. But if one be indicted of the death of a man vnknowne, it is a good indictment: For he that was slaine may be so mangled in the face by the Murderer, or some other, or by some other meanes, that he cannot be knowne. And though in that case no man can be of kinne to him who is vtterly vnknowne, by which means no appeale can be maintained by any, yet seeing offences must not remaine vnpunished, the offendor in this case shall be indicted: and the enquest which shall passe vppon his arraignement, shall deliuer to the Court a name of him that was slaine, to the intent that if the party arraigned, or any other, shall vouch that Record, he shall not depart from thence without a certaine name. In an indictment of Treason or Felony, the party indicted shall not pleade misnaming of his sirname, but he must answer to the indictment, whether he haue one name or other: And yet in an appeale it is otherwise: But in an appeale and also in an indictment, the Prisoner may pleade misnaming of his name of Baptisme, and it being proued, the indictment shall be quashed. In an indictment the partie indicted may become an approuer, and so cannot an appellee in an appeale. In an appeale the defendant may haue his triall by battell, if he will, but so he cannot haue which is indicted. A Felon may be indicted in the county where he did steale the goods, The differences betweene Appeale and Indictment.

02.Ass.p.94.

No name.

M.2.E.3.26. 9.H.6.45. 2.Ass p.7. Killing of a man vnknown.

2.Ed.3.26. 21.Eliz. Dyer 285.

Misnaming.

7.H.5.5. 11.H.4.40. 11.H.7.5. Fi.Cor.113.

22.Ed.4.19. Approuer.

Triall by battell.

4.H.7.5.

or in any other county whither he carried them. And in like sort an appeal may be pursued against a felon, in the county where he did first steale the goods, or in any other county whither he carried them.

Pleading another time acquit of the same felonie.

38 It is a good plea in an appeal or indictment of felony, to say, that he was at another time arraigned of the same felony, before such Iust. & acquited, and to vouch the record: for he shal not be compelled to haue the record in hand, because his plea is not dilatory, but in bar, and that plea shalbe a good bar (if it bee a lawfull acquitall) for that by the common law a man shall not put his life in ieopardie of triall twice for one and the same felony, saving in certaine speciall cases. But it ought to be of one offence, or else his plea is to no purpose. And

Another offence.

therfore if two men be indicted of felony, as principals, and after by another indictment it is found, that one of them committed the felony, and the other did but feloniously receiue his after the felony committed, & vpon the first indictment they be both arraigned and acquited, and after he which was indicted as accessorie, is arraigned, and pleadeth, that he was at another time acquited of the same felony: this plea wil not discharge him, because it is not of one offence, but of diuers, for it was done at seueral times. But if he had ben indicted as accessory before the offence committed, this acquitall of him as principall, would haue discharged him of his offence also, for they be in manner one offence, although they be done at seueral daies: For when a felony is committed by force of commandement, the commander in that case is party to the principal fact, so is not the other which is accessory after the felony committed. Bracton sayth, that force and commandement be as the foundation of the principall fact, and so annexed and conioyned vnto it, that they cannot be seuered from it: because a wound, a deed, and commandement, do procure one onely fact, and it may be there should haue bene no wound, except there had ben force, neither wound nor force, vnlesse commandement had gone before, and bidden it to haue bene done. But force and commandement (which in the time of Bracton were but accidents to the fact, and made the offendors therin but accessories) be now the principal fact, if the giuer of that commandement be present when the felony is done. S. Appeales 94.

Fitz. Cor. 232. 41. Ass. p. 9. Co. li. 4. 43.

8. H. 5. 6. 27. Ass. p. 10.

Bro. Cor. 185. 2. H. 7. 16. Fitz. Cor. 424.

Bracton.

Indictment of the death of a man knowne by two sirnames.

39 If a man be indicted and arraigned of the death of Io. Stile, which Io. Stile was also knowne by the name of Iohn Noke, as well as by the name of Io. Stile, in this case the defendant may plead, that he was at another time indicted and acquited of the death of Iohn Noke, and auerre, that the said Iohn Noke and Io. Stile were one person, and not diuers, and demaund iudgement, if he shall be put to make answer to that indictment: in which case, notwithstanding this variance of names, he shalbe discharged, because he was indicted and acquited of the death of the selfe same man, of whose death he is now againe indicted and arraigned.

26. Ass. pl. 15. 11. H. 4. 41. Fitz. Cor. 336.

Indicted of the same mans death.

40 If a man be killed two yeares past, and one is indicted and arraigned of his death, and acquited, & after he that was acquited is againe of new indicted and arraigned of the same mans death, supposing that he killed him this present yeare: yet notwithstanding this variance, the party indicted shal shew the truth of the case, and plead his first acquitall for his discharge, and be discharged: And the reason is, because one man cannot be twice killed; for the Court in this case doth vse to charge the enquest with the time of the death of him who is supposed to be slaine, and also whether there were any other which

3. Ass. p. 15. 22. Ass. p. 55. Fitz. Cor. 336.

was

was killed, as the laſt indictment doth ſuppoſe, or not.

41 If a man be indicted in one county of the death of another, and thereupon arraigned, and after he is indicted in another county of the ſame parties death he may plead the ſame acquitall in barre, for that no mans life, ſhall be twice put in ieopardie of triall for one offence, and one man can be but once ſlaine. But it is otherwiſe in an indictment of robberie, for a man may be robbed by one perſon at ſeuerall times, and in ſeuerall counties, and ſo the acquitall of one of the ſame robberies will not ſerue him for the other. And therefore if one be indicted of robbery in one county, the defendant cannot plead, that he was indicted of the ſame robberie in another county, and acquited, for no man can be indicted or arraigned for a robbery, but in the county where the ſame robbery was committed: and though the defendant doth ſurmiſe, that it is but one and the ſame felony, yet that cannot be tried, for the county where the firſt indictment was taken, and the county where the laſt was taken, cannot ioyne to make triall thereof. But ſome do affirme, that it is a good plea in an appeal of robbery, for by the appeale the plaintife is to recouer the goods by the common Law, and ſo he is not vpon an indictment. A man was indicted in the Kings bench of a rape and robbery committed in the county of C. and he pleaded, that he was before indicted of the ſame rape before the Iuſtices of Aſſiſe in the county of C. and arraigned and acquited of the ſame fact: And for that it was of the ſame fact, he was diſcharged.

Indictment in two counties of one offence.

4. H. 7. 5.

42. Aſſ. p. 9.

Indictment of rape.

42 It is not a ſufficient plea in bar in an Appeale or Indictment of felony, to plead, that he was at another time acquited, if there were not ſufficient matter of felony in that appeale or indictment whereof he was acquited: for if there were not ſufficient matter of felony in the firſt appeale or indictment, and the ſame partie is againe indicted of new, by an indictment which doth comprehend ſufficient matter of felony, he ſhall be againe arraigned, becauſe in that caſe he neuer put his life in ieopardy. For when an offendor is diſcharged vpon an inſufficient indictment, the law hath not had his end, neither was the life of the party in the iudgement of law at any time in ieopardy: And the law will not ſuffer great offences to go vnpuniſhed.

Co. li. 4. 45.
Fitz. Cor. 444.

Arraigned vpon an inſufficient indictment or appeale.

43 If one be acquited vpon an erronious appeale, which acquitall is reuerſed by errour, he ſhall now be arraigned at the B. ſuit, vpon an indictment, for that by the reuerſall he is become in that ſtate, as if he had not beene acquited. But vntill that reuerſal be made, it ſhalbe a good plea to plead, another time acquit. And it ſeemeth, that the ſame is when the errour is in Proces that is not materiall, which the defendant doth appeare and anſwer to the originall writ. But the def. ſhal not any more make anſwer to the appellant, although the firſt acquitall be reuerſed, for ſo the appellant might delude the court infinitly, and the defendant ſhould neuer be deliuered.

9 H. 5. 2.

Fitz. Cor. 444.

Acquit vpon an erronious appeale.

44 If one do bring an appeale, which hath no cauſe to maintaine the ſame: As if one which is not the lawfull wife, or the next heire of him that was ſlaine do bring an appeale, & the defendant doth take no aduantage thereof but pleadeth not guilty, and is acquit, yet this acquitall wil not ſerue to bar the lawful wife, or next heire of the dead, when they ſhall bring their appeale neither in this caſe the king ſhalbe barred to arraigne him vpon an indictment, or vpon a new appeale, when the party plaintife is nonſuit therein.

21. H. 6. 20.

Acquit vpon an Appeale brought by one that hath no right.

One arraigned vpon an indictment before the parties appeale be determined.

45 If one bee arraigned vpon an Indictment at the Kings suit, and acquited (where, by the order of law, the King ought to haue tarried vntill the appeale which was depending had been determined) yet this is no errour: but the foresaid plea, viz. another time acquit of the same felonie, shall serue him that doth plead it. 18.Ed.411. 8.H.5.6.

Acquit by battell in an appeale

46 If a man be indicted of felony, and arraigned at the Kings suit, it is no plea for him to say, that at another time hee was acquited of the same Felonie in appeale, if so bee that the same acquitall were not by enquest, but by battell. And the reason is, because tryall by battell lyeth not against the King, and therefore, it is not meet that he should be bound by that trial, whereunto hee neither was nor could be partie. And yet Bracton sayth, that if the appellee in an appeale doth make his choyce, to defend himselfe by his bodie, and all things bee readie which doe ioyne the appeale, battell shall bee presently waged, and if in that case hee that is appealed by diuers, of one fact, and of one wound, doe defend himselfe against one of them, hee shall goe acquit against all the residue of the appellants. And so it is at the Kings suit, for by this meanes he doth purge his innocencie against them all, as much as if hee had put himselfe vpon the Countrey, and the Countrey had clearely acquited him. Ideo quære. Fitz.Cor.375. Bracton.

A murderer indicted and arraigned at the K. suite.

47 Because, by the common law, within a yeare and a day after any murder or homicide had beene done, the felonie should not haue beene determined at the Kings suit, for sauing of the parties appeale, wherein the party was oftimes slow, and also agreed with, and by the end of the yeare all was forgotten: And also for that hee which will sue an appeale, must sue it in proper person, which suit is long and costly, and maketh the appellant diuers times weary thereof, which were occasions of murder and manslaughter: for the reformation whereof, by a statute made Anno 3.H.7. it was enacted, That if any man be slaine, or murdered and the slaiers, murderers, abettors, maintainers, and comforters of the same bee indicted thereof, the same slayers and murderers, and all other accessories of the same, shalbe arraigned & determined of the same felony & murder at any time at the K. suit, within the yere after the same felonie & murder done, & not tarry the yere & day for any appeal to be taken for the same felony or murder. And if it happen any person so named as principall or accessorie to be acquited of such murder at the Kings suit, within the yeare and day, then the Justices before whom he is acquited, shall not suffer him to go at large, but either shall remit him againe to prison, or else let him to baile after their discretion, till the yeare and day be passed. And if the same Felons, Murderers, and Accessories, or any of them so arraigned, be acquited, or the principall of the sayd felonie, or any of them be attainted, the wife, or next heire to him so slaine, as case shall require, may take their appeale of the same death and murder, within the yeare and day after the same felony and murder done, against the said person so arraigned and acquit, and all other their accessories, or against the accessories of the sayd principall, or any of them so attainted, or against the sayd principall so attainted, if they be then liuing, and the benefit of the Clergie thereof before not had. And the appellant shall haue such aduantages, as if the sayd acquitall and attainder had not beene, the acquitall or attainder notwithstanding. The wife or heire of the person so slaine or murdered, as case shall require, may commence their appeale in proper person 3.H.7.1.

ſon, at any time within the yeare after the felonie done, before the Shirife and Coroners of the Countie where the ſayd felonie and murder was done, or before the King in his Bench, or Juſtices of gaole deliuerie. And though that by force of the ſayd ſtatute of 3. H. 7. at another time acquited is no plea in an Appeal of death at this day, yet in an indictment of death, it is a good plea, to plead that he was at another time acquited in an appeale brought of the ſame parties death. S. Appeales 93. Another time acquit, no plea in appeale, but in indictment.

48 And ſo it appeareth, that the before rehearſed enormities that were at the common Law, and ſome others, touching the indicting and arraigning of murderers and manqueliers, be remedied by the foreſaid ſtatute of 3. H. 7. but in other appeales the rules of the common Law do continue in force: For if a man be indicted of robberie, and he that was robbed hath an appeale depending of the ſame robberie, againſt the partie indicted, in which appeale he hath proceeded ſo farre, that the Juſt. may perceiue that it is of the ſame robbery, they ought to ſurceaſe to try the Appellee vpon the indictment, vntill the plaintife hath made his declaration: For in an appeale by writ the robbery cannot be certainly knowen vntil he hath made his declaration, though it be otherwiſe in an appeale commenced by bil. 31. H. 4. 11. No indictmẽt of robbery vntill the appeale be tryed.

49 Though at another time conuicted or attainted of the ſame felony, was and is a good plea for him that is the ſecond time, or more often, indicted and arraigned againe vpon the ſame Felonie, yet by the Common Lawe, if one had beene indicted and arraigned of Felonie, and deliuered to the Ordinary as a Clarke conuict, and before he had made his purgation of the ſame felony, he had broken the Ordinaries Priſon, and eſcaped, he might haue beene another time arraigned vpon the ſame indictment. And it was no plea for him to plead, that he was another time conuict of the ſame felonie, and deliuered to the Ordinarie, or that he was a Clerke, and could not anſwer without his Ordinarie, becauſe he remained vnpurged of the Felonie, and did loſe the benefit of his Clergie, by the breaking of Priſon. And yet at that time, if he had not broken the Ordinaries Priſon, but departed by his licence, then at another time conuict ſhould haue beene a good plea for him vpon his ſecond arraignment. But now ſithence by the Statute of Anno 18. El. every perſon which ſhall be admitted, to haue the benefit of his Clergie, ſhall not thereupon be deliuered to the Ordinary, as hath bin accuſtomed, but after ſuch clergie allowed, and burning in the hand, ſhall forthwith bee enlarged and deliuered out of Priſon by the Juſtices before whom ſuch Clergy ſhall bee granted. Therefore at this day if one bee conuicted of Felonie, and hath the benefit of his Clergie, and is burned in the hand, if after in any caſe he ſhall bee indicted and arraigned of the ſame Felonie, it ſhall bee a good plea for him to pleade that he was another time conuict of the ſame Felony (becauſe the life of a man ſhall not be twice put in ieopardie for one offence) yea though he ſhall breake the Priſon, and depart from thence within that time after his conuiction which the Juſtices ſhall thinke conuenient to detaine him in Priſon for his further correction: for now he is not in Priſon for Felonie, but for correction. Another time conuict of the ſame Felonie, Fitz. Cor. 232. 18. El. 6. Co. l. 4. 40. 45.

50 It is a good plea for him that is arraigned of Felonie, to plead, that he is attainted of Felonie, and to demaund iudgement, if during this attainder he ſhall be put to anſwer to that Felonie whereof he is attainted, Another time attainted of Felonie.

or to any other Felonie: for if hée should bée put to answer, no more could bée recouered of him that is recouered, neither can he forfeit more than hée hath forfeited, hauing forfeited life, lands, goods, and all that hée hath: and therefore it should bée to no purpose to trouble him any more. But it is otherwise, where it is to any end or purpose to put him to answer, and pleade againe to a new indictment, as in some speciall cases it may bée done: As a man attainted of Felonie, hath also committed treason at the time of the Felonie committed: in this case hée shall answer to the Treason for the Kings aduauntage, notwithstanding his attainder of Felonie before: because, if hée be attainted of Treason, the King shall haue the eschéat of his lands, of whomsoeuer they be holden: but if the Treason were committed after the Felonie, or at the least after the attainder of Felonie, then it were otherwise: for then the title which was vested in the chiefe Lord of whom his lands were holden, cannot bée deuested by a matter accrued, ex post facto. And also where diuers men haue seuerall appeales of robbery against one man, though hée be attainted at the sute of one of them, yet to the intent that euerie of them may recouer his goods which were robbed and taken from him, vpon his fresh sute, hée shalbe againe arraigned at euery of their suits. And it is no plea for him in this case to plead, that he was another time attainted of Felonie.

28.E.3.90.

1.H.6.5.

4.E.4.11.

The K. pardō obiected against another time attainted.

51 In all cases where the Defendant would discharge himselfe by pleading that he was attainted of another Felony then this whereof hée is now arraigned, it may bée replied for the party, or the King, that after the same attainder the King did pardon him that Felonie, whereof he saith he was attainted, and his attainder thereof, whereby he was restored to the Law: and so he ought to answer to all other Felonies, notwithstanding they were committed before this whereof he pleadeth that hée was attainted: but of that Felonie whereof he is attainted, he shall not answer any more, after that he hath the Kings pardon thereof.

6.H.4.6.

Who is sayde attainted, and who conuict of Felonie.

52 A man attainted of Felonie is hée, which vpon his arraignement submitting himselfe to bée tried by the Countrie, is found guilty of Felonie by the verdict of xij. men, or doth confesse the Felonie in Court of Record before the Judge, vppon his arraignement, or is indicted of Felonie, and for default of apparance is outlawed, and in any of the sayd three cases hath his iudgement of death. A man conuict of Felonie, is hée, who being indicted of Felonie, vppon his arraignement doth submit himselfe to bée tried by the Countrie, and is found guiltie of Felonie by the verdict of twelue men, and then before iudgement prayeth his Clergie, and hath his Clergie, and is burned in the hand. This difference there is betweene a man attainted of Felonie, and a man conuicted of Felonie, as touching their arraignements againe for other offences: for a man attainted of Felonie, shall not bée arraigned againe of any other offences whatsoeuer, whether Clergie were allowable in them or not (vnlesse it bée in some speciall cases before declared) because there can no more bée recouered of him than is recouered, neither can hée forfeit more than hée hath forfeited. But because of a Clerke conuict, there may bée more recouered than is recouered, and hée may forfeit more than he hath forfeited: Therefore by the Statute of Anno 8. Eliz. & 18. Eliz. it was ordained, That euery person which shall vpon his arraignement for any Felonie be allowed his Clergie, shall

8.E.4.
18.El.c.
5.Ass.56.57.

shal answer to all former Felonies, as though no such admission of Clergie had beene. If a man be indicted of Piracie, doth stand mute, or will
14.H.6.Dy.30 not answer directly, or &c. whereupon iudgement of paine fort & dure is giuen against him, but he is not put to execution: and after by a generall pardon by act of Parliament, all Contempts, Paines, and Executions, be pardoned (but all Piracies be except) in this case the same party may be indicted and arraigned againe for another robberie vppon Sea, or Piracie committed vpon the Sea at the same time that he did the first.

Main-



Mainprise and Bayle.

In what case a prisoner is mainpernable in what not.

1 When the defendant in case of felony is taken and arrested, he wil ofttimes desire to be let to baile or mainprise: and therefore it is to be considered in what cases the prisoner by the Law is mainpernable, and in what not. There be two sorts of offendors in felony, viz. the Principall and the Accessory, The Accessorie is repleuisable by the Common law vntil the Principall be attainted, but not after, as it appeareth by Bracton, Britton and diuers iudgements. But sithence that time the law hath bin put in vre to the contrary, viz. That after plea pleaded (notwithstanding the principal be attainted) yet the accessorie shalbe let to mainprise, and though it be in appeale of death: And the reason is, because the stat. of W. 1. affirmeth expresly, That they which be indicted of receit of theeues, or felons, or of commandement, or force, or aid of the felony committed, shalbe let out by sufficient suertie: which stat. is expounded so fauorably towards the accessory, that those be vsed to be let to baile which be indicted of abetmẽt, consent, or procurement. And yet such accessories be not expresly contained in the said stat. And so the accessorie as well in case of the death of a man, as in other felony, is to be let to mainprise.

The accessory let to mainprise.

40.E.3.42. 43.Ed.3.17. 27.Ass.p.10. 2.& 3.P.& M Dyer 120. 32.3.E.1.15. Register fol. 250.

The principal in death.

2 The principall in case of the death of a man, is not to be let to mainprise, either by the common law, nor by the stat. (but in some speciall cases) for if an appeal of death be commenced, which is not grounded vpon an indictment (but is suggested to be begun vpon malice) & that some others were indicted of the same persons death, yet because the appeale was of the death of a man, and the malice suggested was not confessed of the K. or appellants part, the Iu. would not let the appellée to mainprise. And so it seemeth, that notwithstanding it be an appeale of death, yet if there be no indictment to affirme the same appeal, the Iust. vpon the consideration aforesayd, or such like, may let the defendant to mainprise, though he be appealed as principall.

The principal in appeale of death let to mainprise.

25.H.3.44. 44.E.3.38. 21.E.4.72. 21.Ed.4.25. 48.E.3.22. 2.& 3.P.& M Dyer 120.

3 An Appeale of death was remoued out of the countie into the K. Bench by a Certiorari, & a Scire fac' was sued against the plaintif in the appeal, which was returned Nihil, and so it was returned vpon the Sicut alias. And thereupon the Iu. considering that it was a mischiefe to the plaintife to lose his sute, & to yeeld damages, whereas he was neuer warned, and peraduenture hath some what

48.Ed.3.22.

what in another countie: and on the other side it was inconuenient for the appellée to remaine continually in prison: therefore they awarded another Scire fac' against the appellant, returnable at a certaine day, before which day they would be aduised what was by law to be done, and in the meane time they did let the appellée to mainprise. The principal in appeale of death let to mainprise.

4 If in an appeale the def. do plead Excommunication in the plaintife, the appellée shalbe let to mainprise from day to day, vntil the plaintife be absolued, though it be in an appeale of death: or otherwise the appellée should remain in prison vntill the pl. were assoiled, which peraduenture will neuer be. And in respect of this mischiefe, it was ordained by the stat. of 3. H. 7. That he which is within the yeare acquited of murder at the K. suit shalbe sent to prison againe, or otherwise let to baile vntill the end of the yeare, within which time the partie is to haue an appeale, if he will. Excommunication in the plaintife.

3 Ass. p 12. 13. E. 4 8.

34 H. 7. 1.

5 Because Sheriues and others did take & keepe in prison some persons accused of felony, and presently did let out to baile such as were not repleuisable, and kept in prison such as were mainpernable, to the intent to get of the one, and to grieue the other. And forasmuch as it was not before determined, which persons were mainpernable, and which were not, but only they that were taken for the death of a man, by ỳ commandement of the K. or his Iu. or for the forrest: therfore by the stat. of W. 1. viz. 3. E. 1. it was ordained, That prisoners which before were outlawed, and they which haue abiured the realm, prouers, and they which be taken with the maioure, & such as haue broken the K. prison, thæues openly defamed & knowne, and such as be appealed by prouers, so long as the prouer doth liue, except he be of good fame: and such as be taken for burning of a house feloniously done, or for false mony, or for counterfeiting the Kings Seale: Or persons excommunicat, taken at the Bishops request, or for a manifest offence, or for treason touching the King, shall be in no wise mainpernable by a common writ, nor without writ: But such as be indicted of larceny by enquests taken before Sheriffs or Bailifs by their office, or of light suspicion, or for petit larceny that amounteth not aboue the value of xij. d. if they were not guilty of some larceny before, or guiltie of receit of thæues or felons, or of commandement, or force, or of aid in felony done, or guilty of some other trespas, for which one ought not to lose life or member. And a man appealed of an appruer, after the death of the appruer, if he be no common thæfe, nor defamed, shalbe let out by sufficient suertie, whereof the Sherife will be answerable, and that without giuing any part of their goods. Not baileable by the common law. Who are mainpernable, and who not.

3 E. 1. 15.

If the Sherife or any other let one go at large by suerty, which is not repleuisable, if he be Sherife, Constable, or any other Bailife of fee, which hath the keeping of prisoners, and is thereof attainted, he shall lose his fee and office for euer. And if the Undersherife, Constable, or Bailife of such as haue fee for keeping of prisoners, do it contrary to the will of his Maister, or any other Bailife being not of fee, they shall haue iij. yeares imprisonment, & make fine at the K. pleasure. Whosoeuer doth withhold prisoners repleuisable after they haue offered sufficient suerty, shall pay a grieuous amerciament to the King: and he that doth take any reward for the deliuerance of such, shall pay double to the prisoner, and also a grieuous amerciament to the King. Bailement by the Sherife.

3 E. 1. 15. Withholding of prisoners repleuisable.

6 By the foresaid Stat. of West. 1. 15. it doth appeare that in foure cases a man was not mainpernable at the common law, viz. they that were taken for the

In what cases no mainprize at the common law.

The K. commandement.

The Justices commandement.

the death of a man, or by the Kings commandement, or of his Justices, or for the forrest. Touching the death of a man it is intreated of before. And as concerning the Kings commaundement, this is intended the Kings commaundement, by his owne mouth, or by his councell which is incorporat to him, and do speake with the Kings mouth, and by authoritie from him: Or otherwise, if those words should be taken his generall commandement, it may be sayd that euery Capias in a personall action is the Kings commandement, for it is Precipimus tibi quod capias &c. and yet in that case the defendant is repleuisable by the common law. And as touching the Justices commandement, this shall be intended their absolute commandement: for if it be their ordinary commandement he is repleuisable by the Sherife, saning in certain cases prohibited by the statute.

The marshall of the Kings Bench shall baile no prisoner.

7 Because in times past diuers persons that were indicted of felonies, robberies, and larcenies did remoue the same indictments into the Kings Bench, and there yelded themselues prisoners, and were presently bailed by the marshals of the same Bench, and after did lie in wait to kill or misule their indictors: And also for that certaine persons appealed of felonie, after the Exigent awarded, did yelo themselues in the Kings Bench, and then were let to baile by the marshals of the said bench: for the preuention whereof it was enacted by a statute made Anñ 5. E. 3. That such inditées and appellées shalbe safely and surely kept in prison, according to the charge which the said marshals shal haue of the Justices. And the marshals of the K. bench shal not baile any selons, but shall keepe them in prison, and shall not suffer them to go wandring abroad by baile, nor without baile. And if any such prisoner be found wandring out of prison by baile or without baile, & that be proued at the K. suit, or the parties, the marshals which shalbe found guilty therof, shalbe halfe a yere imprisoned, and ransomed at the Kings pleasure. And the Justices shall inquire thereof when they se cause. And if the marshals suffer the prisoner to escape by their assent, they shalbe at the law as before time they haue bin. And so it appeareth by this Stat. that imprisonment by commandement of a Justice, was not sufficient to restraine bailement in all cases, where bailement was not prohibited by the law, vntill the foresaid Stat. of Anñ 5. E. 3. was made, and that is to be intended of an ordinarie commandement of a Ju. for if he do give an absolute commandement, the prisoner is not baileable: As if the Justice command one to prison, without shewing cause why he doth so commaund, or for misdemeanor done in his presence, or for some other cause, which lieth in the discretion of the Justice more than in his ordinary power.

5. 5, Rd. 3. 8.

A Justices ordinary commaundement, and absolute.

8 The fourth cause why a man is not repleuisable by the common Law, is the forrest: for whereas by the Statuts of Charta forestæ, made anñ. 9. H. 3. and confirmed by King E. 1. The King did graunt for him and his heires that of trespasses committed in his Forrests of vert and venison, that the Forresters in whose Bailiwickes such trespasses should be committed, should present the same trespasses at the nert Swanimot, before the Forresters, Verderers, Regardors, and Agistors, and other Ministers aforesaid, by the oathes as well of Knights, as others, wise, and lawful men, and not suspicious of the parts nert adioyning, and nerest where those trespasses shall be so presented, and where the truth may best and most certainly be inquired of, and the same truth being once found out, those presentments by the common assent and agreement of all the Officers aforesaid shalbe solemnely written & sealed with their seales.

St. Char. Forest, 16.

And

And if any indictment be made in other manner, it shalbe accounted void. And because the chiefe wardens of Forrests did not obserue the sayd order, but that diuers people were disherited, ransomed, and vndone by the chiefe wardens of the Forrest on this side Trent, and beyond, and by other ministers, against the forme of the foresaid great Charter of the Forrest. Therefore by the Stat. made añ 1. E. 3. it was ordained, That no man shalbe taken or imprisoned for vert or venison, vnlesse he be taken with the manner, or else indicted in forme aforesaid. And then the chiefe warden of the Forrest shal let him to mainprise, vntill the Eire of the Forrest, without taking any thing for his deliuerance. And if the sayd warden will not doe it, there shalbe a writ awarded out of the Chancerie (which was in auncient time ordained for such persons so indicted) to let him to mainprise vntill the Eire. And if the said warden after the receit of the same writ wil not deliuer to mainprise such person indicted, without delay, then the plaintife shall haue a writ out of the Chancerie, to the Sherife, to attach the said warden to be before the K. at a certaine day, to answer wherefore he hath not replenied him that was so taken: And the Sherife calling to him the Verderers shall deliuer him which was taken to mainprise in the presence of the Verderers, and shall deliuer the names of the mainpernors to the same Verderers to answer in Eire before the Justices. And if the chiefe warden shall be thereof attainted, the plaintife shall haue his treble dammage awarded vnto him, and the warden shalbe committed to prison, and ransomed at the Kings pleasure. And by the Statute of añ 7. R. 2. it was ordained, That if any officer of the Forrest doth imprison any person, or doth compell any person to make any Obligation, or ransome vnto him, against the ordinance aforesaid, and is thereof attainted, hee shall pay to the partie grieued his double dammages, and make fine to the King.

St. 1. E. 3. 8.

Punishment for vert or venison.

St. 7. R. 2. 4.

9 Whereas the before rehearsed stat. of West. 1. doth begin with those prisoners which before were Outlawed, &c. yet there be some cases wherein such as be outlawed may be let to mainprise: as where in an appeal of robbery or other felonie (being not for the death of a man) the defendant doth come in by Capias vtlagatum, and plead misnaming of himselfe, and hath a Scire facias against the appellant: In this case he shalbe let to baile. And the same law is, if he which is outlawed for felonie be taken, and brought to the barre, and alleageth error in the Record, the Court of fauour wil suffer him to find mainprise, and to go and seeke to purchase his writ of Error.

St. 3. E. 1. 15.

5. H. 7. 16.

19. H. 7. 2.

In what cases he that is outlawed may be let to mainprise.

St. 3. E. 1. 15.

10 And the foresayd stat. of W. 1. saith further, that they which be appelled by Prouers shal not be let to mainprise, so long as the Prouers do liue, if they be not of good fame: & yet in some cases he that is appealed by a Prouer shall be let to mainprise during the prouers life: as where the approuer doth waiue his appeale, and that the defendant is not appealed by another approuer, he shalbe let to mainprise: for if he be appealed by another approuer, he shall not be let to mainprise. And if the appellee do vanquish one approuer in battell, yet if he be appelled by another approuer, he shall not be let to mainprise.

Mainprise during the Prouers life.

25. Ed. 3. 42.

St. 3. E. 1. 15.

Registrum de manucaptione

11 Whereas by the words of the foresaid Statut of West. 1. such as be indited of Larcenie by Enquests taken before Sheriffs or bailifes by their office, shalbe let at liberty vpon sufficient suerty. Yet it appeareth by ỹ register, that they shall not be let to mainprise, if they be not also of good fame. But if they be of good fame, they are to be let to mainprise, notwithstanding they be not indited before Sheriffes or Bailifes, but before any other Justice that hath authoritie

Mainprise vpon good name,

thoritie to heare and determine felonie, and that as well the principals as the accessories: for the said Stat. of West. 1. doth no more restraine the principals, than the accessories, in those cases where the same statute doth not prohibit to let to mainprise. As if a man be indicted of Burglaris as principall, yet he may be let to mainprise: And the principall in an appeale of Robberie may be let to mainprise. And in the Register there is a writ de Mancupatione graunted in that case.

The principall in Burglarie or robbery mainpernable.

29. Ass. p. 44. Registrum.

12 Though it doth not appeare by any words of the foresaid stat. of West. 1. that it doth prohibit the bailement of those which be attainted by verdict: yet it is to be intended, that the same Stat. doth as well prohibit the bailement of those which bee attainted by verdict, as it doth of them who be attainted by Outlawrie: for seeing before the Stat. of 18. El. 6. if a Clerke conuict had beene deliuered to the Ordinary, he was not mainpernable, which is a stronger case than a man attainted by verdict: Therefore it is cleare, that a man attainted is not mainpernable: for if a prisoner after that he hath pleaded not guilty, be attainted by verdict, that he killed a man in his owne defence, or by misfortune, yet he shall not be let to mainprise: for it is in the Kings pleasure whether hee will grant him pardon or not. But in that case the Justices commanded the Sherife to put no irons vpon the saide prisoner, and to shew him as much fauour as he could. And the Ju. are to certifie the King of the said verdict, who at his pleasure may write to the Sherife to baile the same prisoner. And if a man that is arraigned of homicide doth plead not guilty, and is found guilty, & doth pray his Clergy, and is reprieued without iudgement, he is not baileable, for hee is more than vehemently suspected, being conuicted of felonie.

No bailement of a prisoner attainted.

15. H. 7. 9.

25. Ed. 3. 42. Pl. Cor. 354. 297.

No bailement of a prisoner conuicted.

2. Rl. Dy. 179.

13 Whereas by the Statute of Anno 3. H. 7. it was enacted, that no Prisoner arrested for felonie should be let to baile or mainprise by any one Justice of peace, but by the whole Justices, or at the least by two of them, whereof one to be of the Quorum: Since the making of which Statute one Justice of peace in the name of himselfe, and one other of the Justices his companion, not making the said Just. party nor priuy vnto the case wherefore the prisoner should bee bailed, hath oftimes by sinister labour and meanes set at large the greatest and notablest offendors, such as be not repleuisable by the Lawes of this Realme: and yet the rather to hide their affection in that behalfe, haue signified the cause of their apprehension, to be but only for suspicion of felony, whereby the said offendors haue escaped vnpunished, to the incouragemēt of thēues, and euill doers: For reformation whereof by a Statute made Anno 1. & 2. P. & M. it was ordained, That no Justice or Justices of Peace shall let to baile or mainprise any such person or persons which for any offence, or offences by them or any of them committed, be declared not to bee repleuisable or bailed, or forbidden to be replevied or bailed by the statute of West 1. made Ann 3. E. 1. And furthermore, that any person or persons arrested for manslaughter or felonie, or suspicion of manslaughter or felonie, being baileable by the Law, shall not be let to baile or mainprise by any Justice of Peace, if it be not in open Sessions, except it bee by two Just. of peace at the least, whereof one to be of the Quorum: and the same Justices to be present together at the time of the said bailement or mainprise, which bailement or mainprise they shall certifie in writing, subscribed or signed with their owne hands at the next generall Gaole deliuerie, to be holden within that countie, where the sayd person or persons shalbe arrested or suspected. And the said Ju. or one of them being

St. 3. H. 7. 3.

St. 1. & 2. P. & M. 13.

Bailing of offendors by Just. of peace.

ing of the Quorum, when any such prisoner is brought before them, for anie manslaughter or felonie, before anie bailement, or mainprise, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same, or as much thereof as shall be materiall to prowe the felonie, shall put in writing before they make the same bailement: which said examination, together with the said bailement, the saide Justices shall certifie at the nert generall Gaole delinerie to be holden within the limites of their Commission. And everie Coroner upon anie inquisition before him found, whereby anie person or persons shall be indicted for murther or manslaughter, or accessorie or accessories to the same, before the murder or manslaughter committed, shall put in writing the effect of the evidence giuen to the Jury before him, being materiall. And alwel the said Justices, as the said Coroner shal haue authority by this Act to bind all such by recognizance, or obligation, as do declare anie thing materiall to prowe the said murder or manslaughter, offences, or felonies, or to be accessory or accessories to the same, as is aforesaide, to appeare at the nert generall gaole delinery to be holden within the countie, citie, or towne corporat, where the triall thereof shall be, then, and there, to giue euidence against the partie so indicted at the time of his triall, and shall certifie as well the same euidence, as such bond and bonds in writing, which he shall take together with the inquisition or indictment before him taken and found, at, or before the time of his said triall thereof, to be had or made. And likewise the said Justice shall certifie all and euerie such bond taken before him, in like manner as before is said of bailements and examination. And in case any Justice of Peace, or Quorum, or Coroner shall offend in anie thing contrarie to the true intent and meaning of this Act, then the Justice of Gaole Delinerie of the Shire, Citie, Towne, or place where such offence shal happen to be committed, upon due proofe therof by examination before them, shall for euerie such offence, set such fine on euerie of the same Justices of Peace, and Coroner, as the same Justices of Gaole Delinery shall thinke meete, and shall estreate the same, as other fines, and amerciaments assessed before Justices of Gaole Delinerie ought to be. Prouided alwayes, that Justices of Peace, and Coroners within the Citie of London, and the Countie of Middlesex, and in other Cities, Boroughes, and Townes corporat within this Realme, and Wales, shall within their seuerall iurisdictions haue authoritie to let to baile felons and prisoners, in such manner and forme as they haue beene heretofore accustomed. This Act, or anie thing therein contained to the contrarie notwithstanding. And also shall take examinations and bonds as is aforesaide vpon euerie bailement by them or anie of them to be made, & shal certifie euerie such bailements, bonds, and examinations by them, or anie of them taken, or made, at the nert gaole Delinerie to be holden within the shire, citie, borough, or towne, where their seuerall iurisdictions extendeth, vpon like paine and forfeiture as is before limited in this present Act.

The Coroners dutie vpon an inquisition found.

Certificat of a bond taken by a Justice of peace.

14 Because Sheriffes and others did in times past let to mainprise notorious and knowne theeues, being taken and imprisoned for murder and other felonies, and such as be not mainpernable, contrary to the forme of a Statute made touching those which be repleuisable, and which not, and thereby such malefactors as were not repleuisable were let to mainprise. And for to deliuer them deceitfully before the comming of the Justices in Eire, or other assigned for their deliuerance, they procured and suborned by themselues, and by their

Stat. 3. E. 1. 15

friends, Iurors of the county, and some they threatned: and so partly for feare of the Sheriffes and others which did let them to baile, and partly for feare of those felons which were so let to mainprise, many robberies and homicides were hidden and concealed from the Iustices of Gaole delinerie: for the prevention whereof, by a Statute made Anno 27. Ed. 1. intituled The Statute of fines levied, it was ordained, That Iustices assigned to take assises, in everie county where they take assises, presently after the assises taken, shall remaine both together if they be Lay. And if one of them be a Clarke, then one of the most discreet knights of that County being associate vnto him, by the Kings writ, shall deliver the Gaole in that county, as well within liberties as without, of all the prisoners, according to the vsuall forme of delivering Gaoles. And then the same Iustices shall inquire which Sheriffes and others have let to baile any prisoners that were not replevisable, or have offended in any thing contrary to the statute of West. 1. and to punish and chasten them in every respect, according to the forme of the said statute.

An. 27. E. 1. 3.

Bailement of offendors by Sheriffes.

15 And for the causes afore said it was ordained by the statute of Anno 4. Ed. 3. That good and discréte persons (other than of the places if they may bée found sufficient) shall be assigned in all the Counties of England to take assises, Iuries, and certifications, and to deliver the Gaoles: And the same Iustices shall take the assises, Iuries, and certifications, and shall deliver the Gaoles thrice in the yeare at the least, and more often if néede be: And there shall be assigned good and lawfull men in euery County to keepe the peace, and at the said assignements mention shall be made, that such as shall be indicted or taken by the saide wardens, shall not be let to mainprise by the Sheriffes, nor by any other, if they be not mainpernable by the Lawe: Nor that such persons indicted shalbe delivered, but according to the course of the commonlaw. And the Iustices assigned to deliver the gaols, shal have power to deliver the gaols of those that be indicted before the gardeins of the peace: And the same gardeins shall send before the saide Iustices their indictments. And the same Iustices shall have power to inquire of Sheriffes, gaolers, and others, in whose custodie such persons indicted shall be, if they delivered or let to mainprise any so indicted, which be not mainpernable, and to punish the same Sheriffes, Gaolers, and others, if they have done anie thing contrarie to this Statute. This Statute of 4. E. 3. doth make no mention that the Iustices of Gaole delinerie shall punish Sheriffes and others according to the foresaide Statute of Westminst. as the other statute of 27. Ed. 1. doth, but ordaineth generally that they shall be punished, without determining in what manner: And yet it is to be intended that they shall be punished according to the forme of the saide statute of West. 1. And moreover the saide Iustices of Gaole delinerie may punish them by the common Law, for a negligent escape: for it is a negligent escape to let one to mainprise, who by Law is not mainpernable. And one Iustice did in that case set a fine vpon the Sheriffe, for the like Bailement, a hundred shillings.

Stat. 4. Ed. 3. 2.

Bailement of offendors by Sheriffes and others.

where mainprise is a negligent escape.

25. E. 3. 39

Imprisonment at the Kings pleasure.

16 In all cases where a statute doth ordaine, that an offendors bodie shall be imprisoned at the Kings pleasure, the prisoner cannot be delivered or let to mainprise, vntill the King hath signified his pleasure of him. As if one be imprisoned for going or riding armed, contrary to the statute of Northampton, made Anno 2. Ed. 3. 3.

24. Ed. 3. 42.

17 There

17 There is a difference betweene bailement in felonie, and bailement in a personall Action: for in felony the bailement shall containe a certaine summe of money to be forfeited, if the prisoner do not appeare at a day prefixed. And in a personall action, it is but fineable. And the bailement in felonie is, Ad 21.H.7.20. standum rectum de latrocinio prædicto secundum legem & consuetudinem regni nostri Angliæ, as it doth appeare by the writs of Manucaptione in the Register, which doe imply as much as they that haue him to baile, shall not onelie cause him to appeare, but also to answer.

The difference betweene bailement in felony, & in a personall action.

18 If one doe find mainprise in Court, it is presently matter of Record, 8.Ed.4.5. though it be not entred into the Roll vntill the next Terme.

Mainprise is matter of Record.

Confeſsion of the Offence.

An offendour pleadeth one of three pleas.

1 WHen a priſoner is appealed, or indicted of Treaſon, or Felonie, and brought to the Barre to be arraigned thereof, and his Indictment is read vnto him, he is aſked by the Court what hée will ſaie vnto it: Then either hée doth confeſſe the offence, and the Indictment to bée true: or hée eſtrangeth himſelfe from the offence, and pleadeth, Not guiltie: or elſe hée doth anſwere indirectly, and ſo in effect hée ſtandeth mute, and maketh no anſwer. Of the which later two I will intreat hereafter.

Confeſſion in two ſorts.

2 And therefore beginning with the priſoners Confeſſion of the offence vpon his arraignement: That confeſſion may be made in two ſorts, and to two ſeuerall ends, whereof the one is, hée may confeſſe the offence whereof he is indicted openly in the Court before the Judge: and that he hath committed that act whereof he is indicted and arraigned, and ſubmit himſelfe to the cenſure and iudgement of the Lawe. Which confeſſion of the offence by the priſoner himſelfe in perſon, is the moſt aſſured anſwer, and beſt ſatisfaction that can be deliuered to the Iudge to condemne the offendour, and to all the hearers to giue approbation thereof: So that the ſaid Confeſſion doe proceede freely, and of his owne good will, without menace, threats, rigor, or other extremities: For if the Iudge doe perceiue that the offendors confeſſion doth growe vpon either of thoſe extremities, he ought not to record the confeſſion, but to cauſe the priſoner to pleade to the offence, not guiltie. As, a woman was indicted for the felonious ſtealing of bread to the value of two ſhillings, and being arraigned thereof, ſhe confeſſed the felonie, and ſaid that ſhe did it by the commaundement of her huſband, and the Iudges for pitie would not record her confeſſion, but cauſed her to pleade, not guiltie to the felonie: whereupon a Jurie being charged, it was found that ſhe did ſteale the bread by the compulſion of her huſband, againſt her will, by which meanes ſhe was diſcharged. And in like ſort if the Iudges doe perceiue that the offendour doth confeſſe the offence in miſtaking of the Law, they may ſhew him that fauour, as not to record his confeſſion, but cauſe him to pleade to the Indictment, not guiltie. As a man being indicted of the death of another man, pleaded, that hée

Confeſſion muſt be free, and without menace.

27. Aſſiſe. 40

and

22. Aſſ. pl. 71. and one B. hauing a quarrell, and fighting each with the other, the partie of whoſe death he was indicted, came betweene them to part the fray, and hee againſt his will, by miſſortune, gaue him a blow, whereof he died. For though by the Law this was felony in him being fighting, and intending to hurt or kill B. yet he did miſtake the Lawe therein, and did not take it to be ſo, for that his quarrell was not towards him which he ſlew, but to B. who had no hurt. And further, this confeſſion of the Offence is not ſo penall to the priſoner, (though he doth it freely, and without menace, or other extreamitie) that he is thereby preſently attainted or condemned of that felony, but in many caſes he may be ſaued from death, the moſt bitter rigour of the Lawe, by the benefite of his Cleargie, or by the Kings pardon.

He that confeſſeth doth become an Approuer.

3 The other kind of confeſſion of felonie that is made by a priſoner at his arraignement, openly in court before the Iudge, is when the priſoner doth confeſſe the Indictment to be true, and that he hath committed the offence whereof he is indicted, and then doth become an approuer, viz. an accuſer of others, who haue committed the ſame offence whereof he is indicted, or other offences with him, and then doth requeſt the Iudge to haue a Coroner aſſigned vnto him to whom he may make relation of thoſe offences, and of the whole circumſtances thereof.

Confeſſion before the Coroner.

4 There is alſo a third kinde of confeſſion made by an offendor in felonie, which is not in Court before the Iudge, as the other two be, but before the Coroner in a church or priuiledged place, whereupon the offendor by the auntient Lawe of this Realme is to make his abiuration out of the Realme: Of which approuing, and abiuration, I will write in the two next chapters.

Approuer.

Who is an Appʒouer.

AN Appʒouer is a felon that hath committed a felonie, and after confeſſeth the ſame, and then doth appeale and accuſe others, who were helpers or coadiutors with him to commit the ſame felonie: which thing being done, he is thereby called an Appʒouer, who in latine is termed Probator, for that hee muſt pʒoue that, which is contained in his appeale or accuſation. And the pʒofe muſt be by battel, or by the verdict of twelue men, at the choice of him who is appealed. And if hee doe pʒoue it, the kings of this Realme haue vſed to grant him pardon of his life, becauſe hee doth fight for the peace of the realme, and doth deliuer the country of malefactors: for hee is to make couenant or pʒomiſe to the Judge, who will be ſutor to obtaine his pardon, how many offendors he will conuince, and accordingly he is to banquiſh them in battell, attaint them by verdict, or cauſe them to flie, & ſo by that means to become outlawes. But yet he ſhall be baniſhed the realme, and not continue therein, though he would finde pledges for his good abearing. Briton.

An Appʒouer baniſhed.

Bracton de coron. c. 340.

Of what offences appʒouement may be.

2 A man impʒiſoned for felonie, may appʒoue of treaſon, if he will, and in like ſort, he that is impʒiſoned for treaſon may appʒoue of felonie, if he will: for when the Juſtices do admit him to appʒoue, they do ſweare him vpon a booke, to appʒoue of all felonies and treaſons that he doth know. And yet many doe affirme, that appʒouement muſt be only of the thing, whereof the appʒouer is indicted, and of none other, and of that treaſon or felonie, which he himſelfe with others did commit, and that appʒouement of al other offences is void. As if one will appeale another for robbing of him, viz. of the Appʒouer, it is void: Or if one wil appeale another, for pʒocuring the ſaid appʒouer to commit a felony: Or that where he the ſaid Appʒouer had committed a felonie, the appellee knowing thereof did felониouſly receiue him and comfort him, it is void: becauſe thoſe offences he could not commit, for he could not robbe himſelfe, nor be acceſſorie to himſelfe. Sed de hijs quære: Being the appʒouer is ſworne to appʒoue of all the felonies and treaſons that he doth know. 19. H. 6. 47. 12. Ed. 4. 10. Pitz. cor. 231. 387.

Bracton de coron. c. 340. 25. Ed. 3. 19.

10. Ed. 4. 14. 40. Aſſ. pla. 38

Quære.

Appʒouement in an Indictment, and not Appeale.

3 A man may appʒoue in an indictment of felony, but not in an appeale of felony, for if he ſhould appʒoue in an appeale of felonie, he ſhould thereby delay the Plaintife in the appeale to haue execution of him. And in like ſort, if one that is indicted of felonie, doth become an appʒouer, and after an appeale is ſued againſt him, vpon the ſame indictment: in this caſe he ſhall ſurceaſe to pʒoceed any further in his appʒouement. But vpon an indictment of felonie, the 17. H. 7. 5. Fitz. cor. 113.

Fitz. cor. 442.

the prisoner which is arraigned may confesse the felonie, pray a Coroner, and approue. And though some haue thought, that if a prisoner be not indicted,
Fitz. Cor. 231. but doth stand at the barre, as one that is to be deliuered by Proclamation, if he will refuse the benefit thereof, confesse a felonie, and pray to become an approuer, that he shall be thereunto receiued: And some others haue bin of opinion, that if a man be in prison but for suspition of felony, he may confesse the felonie before a Coroner, and become an approuer: But that cannot be by the Law, for a man cannot be attainted by his confession, if he be not indicted or appealed thereof before: and it is alwaies requisite, for him which shal become an approuer, that his confession be made vpon such matter, vpon which the Iudge at all times at his pleasure, may giue iudgement to attaint him.

An Approuer must confesse the felonie.

4 One may become an approuer before those, who haue authoritie to assign him a Coroner, as the Iustices of the Kings Bench, the Iustices in Eire, and the Iustices of gaole deliuerie: But so can not Iustices of Peace, & therefore a man can not become approuer before them. Neither can a man become
8. H. 4. 19. 9. H. 4. 1 an approuer in a Court Baron before the Steward and Sutors: Nor in the Countie court before the Shirife and Suitors: Nor before any other speciall Iudge, vnlesse his Commission doth extend thereunto.

Before whom one may approue.

5 He that will become an approuer, must when he is at the barre before the Iudge, confesse the felonie, whereof he is arraigned, and pray that a Coroner may be assigned vnto him to heare his approuement or appeale against others: for without confession of the offence, whereof he is arraigned, he can-
Fitz. Cor. 441. 2. H. 7. 3. 21. Ed. 3. 18. 19. H. 6. 47. Fitz. Cor. 440. not pray a Coroner. And this confession must be at the beginning, before hee hath pleaded any plea to the contrary thereof: For if he will pleade not guilty, he cannot after waiue that plea, and confesse the felonie, and pray a Coroner. And the reason is, because it cannot be intended, that he will proue that which he hath affirmed against others, when he hath shewed himselfe so false and vnconstant in his answere before: for he is called an Approuer, viz. Probator, to the intent that he shall prooue that which hee alleadgeth against others, whereof there is small hope to bee conceiued, when in the beginning he hath made a lye of himselfe: for if he will haue his approuement allowed for good, he must alwaies be found to speake trueth, without any lying. And
25. Ed. 3. 42. when the Court doth perceiue that he hath made a lie, they presently take his approuement from him, and giue iudgement, that he shall be hanged. As, an approuer did appeale diuers, and the Shirife and Coroners did testifie, that there were none such in that Countie, and without further inquirie, the ap-
21. H. 6. 34. prouer was adiudged to be hanged. And if vpon the appeale of an approuer, processe be awarded against those which he doth appeale, and the Shirife returneth non sunt inuenti, iudgement shall be giuen, that the approuer shall
Fitz. Cor. 456. be hanged. And in like sort it is, if an approuer doe appeale seuerall persons in seuerall Counties, and processes bee awarded against them, vntill some of them be attainted, & some of them depend in processe not attainted, and the iustices be informed by credible persons of the same county, wherein they were appealed, that there be no such men to their knowledge in rerum natura, the approuer shalbe hanged. An approuer did appeale two men in London, and processe was awarded against them, and it was returned, that there were no such
Fitz. Cor. 460. men dwelling in the city of London, and the approuer agreeing to the same returne, said that they were dwelling within the city of Lincolne, & he was not thereunto receiued, but was adiudged to be hanged: So that if there be any

How an Approuer shall vse himselfe.

No approuement after pleading.

An Approuer must tel truth.

falshod

falshod or lying in the approuer, be it before his approuement or after, and that the court do perceiue it, they will take his appealing from him, & adiudge him to be hanged. And if they do otherwise, it is more of fauour than of right: for of fauor the court may allow the prisoner to waiue his plea of Not-guiltie, and to confesse the felonie, and to become an approuer. And if an approuer doe appeale one, who by his owne confession is out of the Realme, he shal be hanged: for the appellée cannot be attainted at his sute; for though he should be outlawed, yet he may reuerse it at his returne for that cause.

Approuement after pleading not guiltie. 12.Ed.4.10. 21.H.6.35.

6 When a prisoner vpon his arraignement doth confesse the felonie, and praieth a Coroner which is assigned vnto him by the court, he must be sworne in the same court before his departing, to appeal of al felonies & treasons which he doth know: and the court shall appoint him a number of daies, wherein to make his appeale, in the which daies, and in euery of them he ought to appeale: for if three dayes be appointed, and in two of them he doth appeale, and the third day he will affirme to the Coroner, that he can say no more, and the Coroner doth report the same to the court, iudgement shall be giuen, that he shall be hanged.

An Approuers oath. 12.E.4.10. 26.Ass.p.19. Fitz.Cor.438.

7 An approuer shall haue wages of the King euery day that is assigned him by the court to approue in, viz. a penny a day. And some do affirme, that he shall haue no wages, vntill he hath made his proofe by vanquishing some appellée in battell, or by conuicting him by verdict, and then he shall haue wages of the King for euery day.

An Approuers wages Fitz.Cor.438.

8 When a Coroner is assigned to an approuer, the approuer must be let out of prison, to the intent that he may approue or appeal of his owne frée will being at libertie, without any dures: for if it bée by dures, when he commeth againe before the Iustices, he may rehearse his appeal, and disauow it for that cause, which shall be tried by the examination of the Coroner vpon his oath. And if the Coroner do say, that the same appeale was not by dures, the appeal shall stand, and the approuer shall be hanged. And when the approuer hath made his appeal before the Coroner, he shall come againe before the Iustices, and rehearse his appeal before them (for they will not read his appeal vnto him) and if hée do faile in the rehearsall of his appeal, in any word, otherwise than the Coroner hath recorded it, he shall be hanged: as if in his rehersall he do say, that there was a blacke horse stollen, where it was recorded by the Coroner, a redde horse: For the Approuer must declare the thing certainly, with all the circumstances thereof, without any varying or alteration: and he must know the person, whom hée hath appealed, when hée is brought into question, for if hée know him not, it is to be presumed, that they were neuer companions.

An Approuer set at liberty. Fitz.Cor.118. 169.255. 26.Ass.p.19. An Approuers appeale must be certaine. Bracton.

9 After an Approuer hath made his appeal before the Coroner, if the appellées be dwelling in the County where the appeal is made, the Coroner hath authoritie to award proces against them vntill the Exigent, and to direct his proces to the Sherife to serue. But so he cannot doe, if the appellées be dwelling in an other Countie, for then he must not award proces against them, but referre it to the Iustices, before whom he is to record the same appeal. And they may award proces as the Iustices of the K. Bench, and Iustices in Eire may do, who may award proces by the common Law, and Iustices of Gaole deliuerie

Proces against the appellées. 29.Ed.3.48.

Sta. 28. Ed. 1. deliuerie by the ſtatute De Appellatis, made Anno 28. Ed. 1. which hath ordained; That whoſoeuer ſhall be appealed by any approuers remaining in the Gaoles, which the Iuſtices of Gaole deliuery ſhall deliuer, in what places ſoeuer of the Realme the perſons appealed ſhall remaine, immediatly the Shirife of that countie, where ſuch perſons appealed be conuerſant, or may be found, ſhalbe commaunded by the Kings writs vnder the teſtimonie of the ſame Iuſtices, that he ſhall apprehend thoſe perſons appealed, and conuey them to the Gaole, where the approuers, by whoſe appeale they be apprehended, be impriſoned. And the Shirife or Gaoler of that priſon ſhall receiue them: and there they ſhall anſwere before the ſame Iuſtices. And if they put themſelues vpon the country, the Iuſt. ſhall ſend by a iudiciall writ to the Shirife of the county, where the felony was committed, that he ſhal return an Enqueſt before them, at the place, where the approuers do remaine, at a certaine day.

11. Aſſ. p. 27. Fitz. Cor. 387. 443. 21. Ed 3. 17. 17. Ed. 3. 13. 10 It is a good exception for the appellée in his owne defence to alleadge againſt the approuer, that the approuer is a perſon attainted of treaſon, or felony, and to ſhew how, viz. either by verdict, outlawrie, or abiuration, or in any other manner: for ſuch a perſon is out of the Law, and ſo diſabled to appeale or accuſe others. And the ſame law is, if the approuer be a clerke conuict, for he commeth now too late to confeſſe a felonie, when he hath pleaded not guiltie thereunto before, which was found falſe at his owne ſute; and therefore it cannot be intended, that the thing he ſaith now is true. And although he had his clergie vpon confeſſion of the felony, yet he ſhall not now become an approuer, for that he ſaid nothing at that time when he ought to haue approued: & therefore the Law cannot intend, that he hath any thing to ſay now that is true, ſeeing he would not ſpeake it at that time, when he might haue bin heard. But in the foreſaid caſes, if the approuer can ſhew any ſufficient matter, which doth reſtore him to the law, as the Kings pardon, and ſuch like, then the appellée ſhall anſwere to the approuer. S. Appeales 92.

Pleas for the Appellée againſt the Approuer.

In Approuer conuict of felonie.

21. Ed. 3. 17.

Fitz. Cor. 113. 11 If he which is appealed by an approuer will confeſſe the appeale, and pray that he may become an approuer, and appeale others, he ſhall not be receiued thereunto, for ſeuerall cauſes: one is, for that he is appealed of felonie, and not indicted of felonie; and in an appeale, there lieth no approuement: another cauſe is, for that if his approuement ſhould be of the ſame felonie, he ſhould thereby falſifie the appeale of the firſt approuer, in that he did not at the firſt diſcouer all his companions, being ſworne thereunto. And a third cauſe is, for then by that meanes approuements would be infinite, and alſo the appellée is in a ſort out of the law, for that the approuer hath deraigned an appeale againſt him.

In Appellée cannot appeale others.

21. Ed. 3 18. Fitz. Cor. 231. 12 It is a good exception for the appellée to obiect againſt the approuer, that the approuer is not in priſon for any felonie or treaſon, but for debt, or treſpas, or ſome other offence: or to ſay, that the approuer is not in priſon, but at large; for he cannot be an approuer, vnleſſe he be firſt indicted of felonie and doth confeſſe it before a Iudge, and then become an approuer.

Approuer not in priſon for felony, or at libertie.

Bracton. 13 It is a good plea (as ſome do affirme) for him that is appealed, to ſay, that he is a lawfull man, and in the franke pledge, and in the Aſſiſe of our ſoueraign lord the King, & that he hath a Lord, which wil be his pledge. And if that be trauerſed, and found for the appellée, he ſhalbe diſcharged thereby. Sed quære.

The Appellée an honeſt and credible man.

14 In

General plées in Barre of the appeale.

14 In an appeale by an approuer, the appellée may plead, that the same approuer is a preest: not of perfect memorie, deafe, dumbe, a lazar, a naturall fole, a woman, a man aboue threescore and tenne yeares of age, or within age, or that he is mayhemed by some other, and not by the appellée, for that in these cases the approuer cannot deraigne or wage battell with him. S. Appeales 93. Fitz. Cor. 322

Where the king may pursue an appeale begun.

15 In diuers cases, if the appellant do surcease to prosecute his appeale, the king may pursue it: for the appellant may by seuerall meanes leaue off to prosecute his appeale, as by Non-suite, Release, Retraxit, or a woman by taking a husband during the suite of appeale: for in all these cases the appeall doth cease by the act of the partie; & therefore in which case soeuer that Cesser is after declaration in the appeall, the defendant shall not goe at libertie, but shall be arraigned at the Kings suite vpon the same declaration: for that it doth appeare there is a felony committed, and the same is not yet tried. And the same Law is, if the appeale doe cease by the act of God, as if the appellant doe die: Or if it cease by the act of the Law, as if the appellant after his appeal made be hanged: Or if the appellant doe take the priuiledge of his Clergie; for an appeal by an approuer is a great presumption against the defendant, that he is guiltie of the offence whereof he is appealed, and that is for the great punishment which the appellant is to suffer, if he at any time do faile of his appeal, viz. death. And an appeal doth worke a greater presumption against the defendant than an Indictment doth: for that it is vsed, if a man be appealed and indicted of one offence, and the plaintife in the appeal after declaration is Nonsuit; the defendant shall be arraigned at the Kings suite vpon the declaration in the appeal, and not vpon the Indictment: But this presumption riseth where the appellant hath appeared to his suite, and declared: for vntill that time, it carrieth not with it any presumption. Because any man may sue a writ of Appeal out of the Chaunceris in a strangers name, and find pledges to prosecute it, and cause the writ to be deliuered to the Shirife of record, that stranger not knowing thereof; in which case it shall not be said that strangers suite, vntill he hath appeared in proper person thereunto, and declared: for vntill that time, Nonsuite in the appeal is not peremptorie to the stranger. Neither shall the defendant be arraigned at the Kings suite, by this Nonsuite any more than if hee had not beene Nonsuite. But in that case, if a stranger doe bring a new Appeale against the defendant, the defendant shall answere him as hee should haue done if no such Nonsuite had beene. But the Law is otherwise in an Appeall commenced by Bill, for that suite of necessitie must bee made by the partie himselfe in his owne proper person, and his apparance must bee recorded by the Shirife and Coroners, and the yeare, day, and place expressed, where, and when the felony was committed, and who were principals in the same felonie, and who were accessories. And so in an appeale by writ, the plaintifes Non-suite before declaration, doth giue the King no aduantage against the defendant: but in an appeale commenced by Bill before the Shirife and Coroners, or in an appeale by an approuer it is otherwise, for in such an appeale, all the certainty of the felonie is declared and compriſed. In an appeall of murder against three, if one of them plead Not guiltie, ready to defend himselfe by his body, and so wageth battaile, vpon which plea the plaintife demurreth in law, which demurrer is adiudged against him; in this case the same appellée shal be arraigned at the Kings suite: for that the felony is not yet tried, nor he acquit thereof. 3. H. 6. 50. 21. Ed. 3. 28. Fitz. Cor. 369 4. Ed. 4. 10. 8. Ed. 4. 25. 7. H. 7. 5. Fitz. Cor. 384. 22. Ass. p. 97. 2. & 3. P. & M. Dy. 121.

And

And if one of the other appellées do plead, Not guiltie, and that the Plaintife doth demurre thereupon, and it is adiudged a good plea, and the same appellée is acquit against the appellant, yet he shalbe arraigned at the kings suit of the same murder. S. Appeales 96.

Fitz. Cor. 12. 16 If the Defendant in an appeale do pleade a Release inrolled, and of record, made vnto him by the appellant before the appeale commenced, hée shall be presently delinered: But if it be made after the appeale commenced, the Court will intend, that it is of purpose to defraud the King: & therefore in that case he shalbe arraigned at the Kings suite, though he be acquit against the appellant by his release. The appellants release to the Appellée.

21. H. 6. 34. 17 If an approuer, when an Enquest doth appeare vpon the issue ioyned betweene him and the appellée, and be ready to trie the same issue, will confesse his apeale to be false, yet notwithstanding the appellée shalbe arraigned at the K. suit. But if the approuer, when the appellée is in the field ready to deraigne battaile, will confesse his appeale to be false, the appellée shall goe quit, and not be arraigned at the K. suit, and the approuer shall be hanged: for it is as much as if the appellée had vanquished the approuer in battaile. An Approuer confesseth his appeale to be false.

18 If an appeale commenced by Writ do abate before declaration, so that the Court can not be informed of the yéere, day, and place, where, and when the felonie was committed: In that Case the Court doth vse to examine the Coroner, if he be present, if there be any indictment depending of the same felonie, or not: and if he say no, then to send to the Shirife of the Countie, where the felonie was supposed to be committed, to know if he haue any indictment, or not, and in the mean time to let the defendant to mainprise: or otherwise the Court will set the defendant at libertie. There was a time, when if a felon had bin taken with the manoure, and that the felon and the manoure had béene brought into the Court, the Iudges would haue arraigned the offendor vpon the manoure without appeale or indictment: Sed obsoletum. The appeale abating before declaration. A felon taken with the manoure.

19 In euery arraignement which is to be at the Kings suite vpon an Appeal begun by the appellant, the declaration in the same appeale is intended to be once good, and true: for if it were neuer good, and abated for that cause, the appellée shall not be arraigned at the kings suite, notwithstanding the abatement be after declaration. And therefore if an appeale be abated by mis-naming of the Defendant, hé shall not be arraigned at the Kings suite, though the abatement be by the Plaintifes owne confession. And yet in that case it might be said, that the appeale abated by couin, for that the said exception was not tried, but confessed by the Plaintife. And the same Law is, if the appeale shall be abated by mis-naming of the Playntife, or of the Towne, or for lacke of a materiall word. And so it is, if in an appeale, the Defendant doe plead, that the Plaintife is outlawed, or is attainted of Treason, or felonie, or otherwise is disabled to maintaine an appeale: As, if a woman doe bring an appeale of the death of her husband, and the Defendant doth plead, that shée and her said husband were neuer accoupled in lawfull marriage, or that shée hath married another husband: Or, that the appeale was not commenced within the yeare and day after the offence committed: Or, that the appellant hath an elder brother liuing to whom the appeale is giuen, and not to the Plaintife: And all those matters which shall be a Barre to the Playntife, No arraignement at the Kings suite vpon a false declaration.

4. H. 6. 16.

Fitz. Cor. 131. 27. Ass. p. 26. 11. Ass. p. 27. 18 Ed. 3. 35. Fitz. Cor. 3. 384. 317. 37. Ass. p. 25.

to

to bring the appeale, shall also Barre the king to take any aduantage against the appellée, vpon the same appeale: for in all these cases it may appeare that the appeale was commenced without cause, and grounded vpon false matter. 8.Br.15.
And yet it is otherwise, where the appeale was at the first grounded vpon sufficient and true matter. But in all the cases aforesaid, though the king cannot take an aduantage of the appeale against the defendant, yet he shall compell him to answere to an indictment of the same felony, for that by these pleas the defendant is not discharged of the felony, though he be discharged of the appeale. And further, if the appellée be discharged both against the party and also against the king, yet the Court may bind him to his good Abearing, if they shal thinke it meete. Fitz.Cor.387.

If not an Appeale, yet an Indictment at the Kings suite.

Good abearing.

The plaintife in appeale excommunicate.

20 If an Excommunication be pleaded against the plaintife in appeale, notwithstanding the plea be thereby delayed, yet the Defendant shal not be arraigned at the kings suite, for the Plaintife may be absolued, and then proceed in his appeale. And therefore the appeale shal be continued vntill a certaine day, to the intent that the Plaintife may in the meane time procure his absolution: and during that time the Defendant shall be let to mainprise. But if the appellant be outlawed, though the Outlawrie be not for felonie, but for trespas, yet by that meanes the Defendant shalbe set at libertie, aswell against the king, as against the appellant. Notwithstanding in that case, there is no impossibilitie, but the plaintife might purchase his charter of pardon, or reuerse the outlawrie for that it is erronious, and thereby be enabled to pursue his appeale. 13.Ed.4.8. 3.Ed.3.18.

The plaintife in appeale outlawed.

17.Ass.p.26. Fitz. Vlawrie 47.

In Approuer pardoned, the Appellée shall be discharged.

21 If one be appealed by an approuer, and the king doth pardon the approuer, he that is appealed by the approuer, shall be set at libertie, without being arraigned at the kings suite: for by the pardon the felonie is extinct in him, and so he ceaseth to be an approuer, for the approuement shall continue no longer then the approuer is partaker of the felonie, whereof the approuement is made. 47.E.3.5. 47.Ed.3.16.

Vanquishing one approuer.

22 If three men do become approuers seuerally against one man, of one and the same felony, and he ioyneth battell with them all, and doth vanquish that approuer which first ioineth with him, by that meanes he shalbe acquit against them all, and likewise against the King, and the other two approuers shall be hanged. But it is otherwise, if the approuement be of seuerall felonies: for in that case, though the appellée doth ioyne battell with them all, and after vanquish that approuer which first ioyneth with him, he shal be remaunded to prison, vntill he hath ioyned battell with the other two: for that there must be seuerall trials, where there be seuerall felonies, and seuerall issues. 7.Ed.3.Tit. 25.Ed.3.42.

Examining an offendor condemned.

23 If a man would become an approuer, and cannot be suffered by the Law for some disablement, or for the impediments before mentioned, yet before he shall be put to execution, the Court will send the Shirife vnto him, to heare who they be that he can accuse, and thereupon cause the Shirife to invite them at his next Turne. 21.Ed.3.28.

Sanctu-

Sanctuarie, and Abiuration.

1

SAnctuarie in Greeke called Asylum, and by some in Latin termed Templum misericordiæ is a place priuiledged by the King or chiefe gouernor of a country, for the safegard of the life of such a person as doth offend the king, his Lawes, crowne, and dignitie royall. Which priuiledged places were deuised and instituted by the Lawe of mercie vpon deuotion, and the great reuerence and honour that Princes & chiefe Rulers had to such places, wherein they graunted such priuiledges. As, first almighty God himselfe the chiefe Author of mercie gaue in charge to his seruant *Moses* (when the children of Israell were in their peregrination towards the land of Promise) that certaine Cities or places of refuge or Sanctuarie might be prouided for those to flie vnto, and to escape the hands of the reuengers of blood, who should by mischance and not willingly slay others: And after, the same people being setled in the same Land, he caused *Iosua* to execute the same commandement by assigning fiue cities to that purpose. And, long time after that, *Mulmutius Dumvallo* one of the renowned kings of the Britans, who made many most worthy Lawes for the well gouerning of his subiects (which were called *Mulmutius* Lawes) at the least 440. yeares before the Natiuitie of our Sauior Christ, ordained for Sanctuaries, places of priuiledge or defence of mans life, certaine Temples, and the foure great high wayes which he before had caused to be made, or begun, at his owne charges, viz. Folle, Watling Streete, Erming Streete, and Ikeneld Streete, and in some cases, and for some purposes euery plough: which Franchises or Liberties, *Belinus* his sonne did after more fully effect and confirme. And some of the ancient Princes, Kings, or Gouernors in this Realme, graunted places of defence, or sanctuarie to such as should commit treason, and some others to such as should commit Murder, Robbery, Burglary, or other offences whatsoeuer, which in that point was further than the priuiledge which God gaue to his owne Sanctuarie, that was ordained onely for him which should kill an other vnwillingly: for God commanded, that if any did slay his neighbour vpon malice prepenced, or by assault, he should be taken from his Altar, and put to death.

what Sanctuarie is.

Deut.19.

By whom Sanctuaries were instituted.

Iosua 20.

Exodus 21.

2 Abiuration is an oath that a man or woman doth take, when they haue committed felonie, and do flie to a Church, or churchyard for the safegarde of their liues, chosing rather to be perpetually banished out of the realme, than to stand to the Law, and to be tried of the felony: and this was one of saint

what Abiuration is.

Edwards Lawes that was king of this Realme before the Conquest, and instituted by him, which is also founded vpon the Law of Mercy, that the kings of this Realme did extend, for the great reuerence that they did beare to the Temple of God, and to places dedicated to him, which was alwayes vsed sithence that time without alteration vntill the one and twenty yeare of King Henry the eight. And this abiuration is an attainder in it selfe of felonie that is confessed; which attainder by confession is the most strong that may be, for the vehement presumption that it hath of trueth: for it should be very absurd to say that he hath not committed such a felonie when the partie himselfe hath confessed it to the ouerthrow of himselfe and all his posteritie. St. 21. H. 8. 2.

All Sanctuaries be extinguished.

3 By the Statute of Anno 32. H. 8. it was enacted, That all Sanctuaries and places priuiledged, which haue beene vsed or taken for Sanctuarie (except Parish churches and their churchyards, Cathedrall churches, hospitals, and churches collegiate, and all chappels dedicate, vsed as parish churches, and the Sanctuaries to euerie of them belonging: and except such places, and territories as hereafter bee appointed to be places of tuition and priuiledge, viz. Welles, Westminster, Northampton, Norwich, Yorke, Darbie, Launceston, and Westchester) shall be vtterly extinguished, annulled, and voide for euer. And by the Statute of Anno 22. H. 8. it was ordained, That if any person flie or resort to any parish church, Cemitorie, or other like halowed place for tuition of his life, by occasion of any murder, robbery, or other felonie by the same person committed, and thereupon confesse any murder felonie, or other offence before the Coroner, wherefore the same person by the Lawes of this Realme heretofore vsed, should abiure and passe out of the same, The same person thereupon shall abiure from all his libertie of this Realme, and from his liberall and free habitations, resorts and passages, to, and from the vniuersall places of this Realme, which appertaine to the libertie of the Kings subiects vndefamed, and shall forthwith be directed by the Coroner, taking and recording such abiuration, to any one Sanctuary within this Realme, which the same person will elect and chose, there to remaine as a Sanctuarie person abiured during his life, and to be sworne before the Coroner so to doe, and to be marked with a hot yron vpon the brawne of the thumbe of the right hand, according to the statute of Anno 21. H. 8. 2. And by the statute made Anno 1. Iac. 25. it was enacted, That so much of all Statutes as concerneth abiured persons, and Sanctuaries, or ordering or gouerning of persons abiured, or in Sanctuaries, made before the fiue and thirtieth yeare of the late Queene Elizabeths raigne, shall stand repealed, and be voide. And so all Sanctuaries being annulled and extinguished by the foresaid statute of 32. H. 8. 12. sauing churches, and churchyards, which were Sanctuaries by the common Law, and sauing Welles, Westminster, Northampton, &c. erected and made by the said Statute of 32. H. 8. 12. and 33. H. 8. 15. which are also sithence extinguished and annulled by the foresaid Statute of 1. Iac. 25. And therefore by no Lawes or Statutes that wee haue in force, there be any Sanctuaries remaining: neither can any person take the benefit of Sanctuary in any place, or in any case, where there is no such thing in rerum natura (sauing Churches & Churchyards) which neuer were Sanctuaries aboue fortie dayes at the vttermost, and that but in certaine cases, and yet now out of vse. But whether by the strict course of the common Lawes or any Statute in force, they be now to any intentin force, or not, Quere. And for that so much of all stat. as concerneth abiured persons, or ordering St. 32. H. 8. 12. St. 23. H. 8. 14 St. 21. H. 8. 2. St. 1. Iac. 25.

Abiuration by the common Law out of the Realme.

Abiuration to a place within this Realme.

ring

ring, or gouerning of abiured persons, made before An 35. El. be repealed and made void by the before rehearsed Statute of 1. Iac. 25. viz. the statute of 21. H.8.2. 22.H.8.14. 27.H.8.19. 32.H.8.3. 32.H.8.12. And by that means abiuration at the common law is restored to his former course, I will therefore write so much of abiuration, and abiured persons, as is warranted by the common lawes of this Realme onely, and not by any Statute, saving by the statute of Articuli Cleri, made An 9. Ed. 2. 10. which is rather a confirmation or exposition of the common law, than a new law, & except so much as is contained or mentioned in the statute of 35. Eliz. 1. & 2. or in any other law made sithence that time, which I doe rather set downe that the Reader may knowe what the law hath beene, or is, then how it is vsed, and put in practise.

No abiuration for high treason.

4 Abiuration doth not lie for him which offendeth in high treason, because the Coroner cannot attaint him vpon his confession thereof, for that he is not his Iudge of that offence, neither can hee be Iudge as Coroner, though hee haue a commission from the King to doe it. And if the offendor being in a Church would of purpose confesse a felonie, to the intent to escape Treason, yet if the Coroner be informed that hee is charged with treason, hee ought not to suffer him to abiure, and that for the Kings aduantage: for it is better for the King to attaint him of Treason, than of felonie, in respect of the Escheat, which in case of Treason doth wholly belong to the king, of whomsoeuer the offendors lands be holden. And the same law is in petit Treason; for the Coroner ought not to record his abiuration thereof, any more than he may doe of high Treason: Neither the Coroner ought to let him passe by abiuration of an other felonie, if he be informed that the offendor hath committed petit treason, and that for the grieuousnesse of the offence, though the King shall receiue no more benefit in petit treason, than in felony. And the statuts which were made in the time of King H.8. touching abiuration, be a speciall argument & proofe thereof, which doe onely make mention of abiuration for murder and felonie, but not for petit treason.

No abiuration for petit treason.

St. 21. H. 8. 2.
22 H. 8. 14.
27. H. 8. 19.
32. H. 8. 12.

Fitz. Cor. 420.
9. Ed. 4. 28.

5 If a man doe robbe a Church and flie to an other Church for the said offence, and there would abiure, he shall not be receiued thereunto, but shall violently be pulled forth of the Church, and thrust into prison: Quia frustra legis auxilium inuocat, qui in legem delinquit.

No abiuration for the robber of a Church.

Fitz. Cor. 113.
9. Ed. 4. 28.

6 If a man that is attainted of felonie, and in carrying to the gallowes to be put to death, do escape from the Shirife, and flie to a Church, he cannot abiure: and though the Coroner would take his abiuration, and let him goe at libertie, the Shirife may take him againe, and put him to execution, notwithstanding the said abiuration, for it is void, and the Coroner in that case shalbe grieuously amerced for this escape, and so shall the towne where he was let at libertie; and the reason is, for that a man cannot haue two Iudgements for one offence. And so it is, and for the same reason, if a man that is attainted of felonie, and is carried to the gallowes, and hanged, breaketh the halter, falleth downe, and then riseth vp, and doth flie to a Church, he cannot abiure, but must be taken againe by the sherife, & hanged vntil he be dead, according to his iudgement.

No abiuration for a man attainted.

Fitz. Cor. 335.

9. Ed. 4. 28.
3 H 4. 2.
Fitz. Cor. 410.

7 If a man doe abiure the Realme before a Coroner for felonie, and after both returne into the Realme without the Kings pardon, and then flie to a

No abiuration for a man before abiured.

Church, and would abiure againe, he shall not be allowed so to do, but shall be taken forth by violence, and put to execution, for that he was before attainted of felonie vpon his owne confession, and had his iudgement of abiuration, and cannot be twice attainted, or haue two iudgements.

Where an offendor may by violence bee drawne out of a Church.

8 If a man doe flie to a Church, claiming the priuiledge therof for the safeguard of his life, in some cases he may be drawne forth of the same by violence: as, if he come into the Church to claime the benefit thereof for an vnlawfull cause at the beginning, viz. for treason, robbing of a Church, being formerly abiured, or such like, in those cases he may be drawne forth of the Church by violence, by the people of the same towne: and in like sort, if he doe flie to a Church, and saith he doth take it for the safeguard of his life, and will not declare that he hath committed felonie, and that therefore he claimeth the priuiledge of the Church: in that case the officers of the towne may by strength take him out of the Church. But if he do say that he doth take the Church for felonie, that is sufficient, without declaring what felonie, or the manner thereof: for he is not bound to shew that but to the Coroner before whom he doth make his abiuration, and then hee must confesse and shew the yeare, day, and place, where, and when the felony was committed, for that iudgement is to be giuen vpon his confession, which must be grounded vpon certaintie. 3.H 7.12. Bro. Cor. 180.

The offendors cõfession before the Coroner.

Tarrying in a Church aboue the time appointed.

9 If an offendor being in a Church were once lawfull, although he tarrie there aboue the time which the law hath appointed him, yet he ought not for that cause be drawne out of the Church by violence, but meat and drinke shall be withholden from him, and euery person shall be forbidden to succour him: and he that doth relieue him shal be punished at the Kings suite: which punishment some do affirme shall be, for a lay man death, and for a Clerke banishment; for he that taketh a Church for felonie, ought not to tarrie there aboue one night, if a Coroner will come vnto him, and be ready to take his abiuration, otherwise he may tarrie there fourtie daies. Fitz. Cor. 313. Britton. Bracton.

The manner of abiuration.

10 The manner of abiuration is, that he who taketh a Church, ought to declare that he doth take it for felonie which he hath committed: and when the Coroner commeth, he must confesse before him the felonie certainely, viz. the yeare, day, and place, where, and when he committed the felonie, and pray to abiure the Realme, and to haue the tuition of the Church vntill he can prouide for his iourney: and this confession must be taken by the Coroner himselfe, and not by his deputie. And then he shall take an oath, which is his abiuration, in this manner: viz. Heare you this Maister Coroner, That I A. B. am a theefe of two beasts (or a killer of a man) and a felon of the Kings of England: and because I haue committed many offences and thefts in this Realme, I doe abiure the Kingdome of our Soueraigne Lord King Iames: And I must make haste towards the port of S. which thou hast giuen mee: And I must not go out of the high waie; and if I do, then I yeeld to bee taken as a theefe and felon of our Soueraigne Lord the Kings, and at the port I will diligently seek passage, and will not tarrie there but one flowing and ebbing if I may haue passage: And if I cannot haue passage in this time, I will goe euery day vp to the knees into the sea, assaying to passe ouer. And if I cannot doe it within fouretie dayes together, I will returne to the Church as a theefe and felon of our soueraigne Lord the King: So helpe me God, &c. And notwithstanding the words of the said oath, the offendor and not the Coroner ought to make the election

The oath of abiuration. Bracton. Britton.

election of the Port, whither he will goe, and where he will make his passage, and he must make his abiuration at the dore of the Church-yard.

Fitz. Cor. 407. Britton. 11 He that doth abiure the Realme, must haue vpon him but his coate, his shyrt, and his breeches, and his head shal be vncouered, & he must carrie a crosse in his hand, which (as Polidore saith) is a token that his life is saued by Religion: and whatsoeuer he hath beside, is forfeited to the King; and neither the Coroner nor any of his seruants shall take any thing of the offendors for their fee. The attire of an abiured person.

St. 9. E. 2. 10. 12 By the statute of Lincolne made Añ 9. E. 2. They that abiure the realm so long as they be in the high way (halbe in the Kings peace, and be troubled of no man. And whilest they be in the Church, their keepers shall not tarie in the Church-yard, except necessitie, or perill of escape doe require it: and so long as they be in the Church, they shal not be compelled to depart, but may haue those things which be necessary for their liuelihood, and may go forth to discharge nature. But if an abiured person be molested in the high way, and drawne out of the way, and imprisoned, yet that will not excuse him when he is againe at libertie, if he do not within conuenient time after his liberty, returne to the way leading him to the port or place whereunto vpon his abiuration he made choice to goe. But if he do goe out of the high way vpon ignorance, or to ease nature, that shal not hurt him, so that he do return to the high way in conuenient time, or do his good will to returne. The bing of persons abiured.

y H. 7. 7. Fitz. Cor 14.

13 After abiuration if the offendor doe any thing contrarie to his oath, viz. contrary to his abiuration, he shall be put to execution, vnlesse he be a Clerke, and in that case shalbe saued from death by his Clergie: y because the Prelates and Clergie did complaine in Parliament, that though a Clerke ought not to be iudged by a temporall Judge, nor any thing may be done against him that concerneth life or member; neuertheless temporall Judges caused Clerks flying vnto the Church, and confessing their offences to abiure the Realme, and for that cause admitted their abiurations, although hereupon they cannot bee their Judges, and that so power was wrongfully giuen to Laie persons in the punishment of such Clerks. And if such should chance after to returne into the Realme, the said Prelates and Clergie desired such remedie to be prouided therein, that the immunitie or priuiledge of the Church may be preserued vnbroken. Vpon which request by a stat. made Añ 9. E. 2. intituled Articuli cleri, it was enacted, That a Clerke flying to the Church for felonie, to obtaine the priuiledge of the Church, shall not be compelled to abiure the realme, but yelding himselfe to the law of the realme, shall inioy the priuiledge of the Church, according to the laudible customs of the Realme heretofore vsed. Which said Statute being but a rehersall, restoring, and confirmation of the common law, is thought not to be repealed by the words of the foresaid stat. of 1. Iac. And so it appeareth by this stat. that if he which doth flie to a Church, will say that hee is a Clerke, he shall not be compelled to abiure, and if he doe abiure of his owne good will, and thereby doth lose his lands, yet to saue him from execution he shall haue his Clergie. S. Stat. 28. H. 8. 1. Clergie 5. After abiuration broken, death.

St. 9. E. 2. 15.

St. 1 Iac. 25. A Clerke need not abiure.

Fitz. Cor. 425. 14 A maried wife being desirous to bee deliuered from her husband, did flie to a Church, and acknowledged a felonie, where she neuer had committed any felonie, and desired to abiure: and her husband vnderstanding of it came to Where no felonie, no abiuration for felonie.

her, and then shée fled out of the Church & escaped, and towne nor person were amerced for this escape: for there could no felon escape where no felonie was committed. Neither can there be any abiuration where no felonie is committed. And therefore an offendor cannot abiure for petit larcenie. Br. Cor. 182.

The abiured pleadeth that he is not the same person. The Kings pardon.

15 Ye that doth abiure, and is taken againe, and arraigned, may plead that hée is not the same person which did abiure, and then that shall be tried by the Coroner who toke his abiuration: Or hée may plead the Kings pardon granted to him of the felonie and abiuration: for if the pardon make no mention of the abiuration, it is not good. S. Pardon 7. Fitz. Cor. 124. 9. Ed. 4. 28.

Recusant bring conventicles shall abiure the realm.

16 By the statute of Añ 35. El. it was ordained, that if any person or persons aboue the age of sirtéene yeares, which shall offend against the said Act (in persuading others to impugne the Quéenes Ecclesiasticall lawes) shall not within three moneths after they shall be conuicted for their said offences, conforme themselues to the obedience of the Lawes and Statutes of this Realme, in comming to Church to heare diuine Seruice, and in making such publike confession, and submission, as in the said Act is expressed, béeing thereunto required by the Bishop of the Dioces, or any Justice of the Peace in the same countie, where the said person shall happen to be, or by the minister or Curat of the Parish: In euery such case, euery such offendor béeing therennto warned or required by any such Justice of Peace of the same Countie where such offendors shall happen to be, shall vpon his or their corporall Oath, before the Justices of the Peace in the open Quarter Sessions of the same Countie where such offendors shall then bee, or at the Assises and Gaole Deliuerie of the same Countie, before the Justices of the same Assises and Gaole Deliuerie, abiure the Realme of England, and all other the Quéenes Dominions for euer (vnlesse her Maiestie shall licence the parties to returne:) and thereupon shall depart out of the Realme, at such hauen or Port, and within such time as shall in that behalfe be assigned and appointed by the said Justices before whom such abiuration shall be made, vnlesse the same offendor bee letted or staied by such lawfull and reasonable meanes or causes, as by the common lawes of this Realme are permitted and allowed in cases of abiuration for felonie. And in such cases of let or stay, then within such reasonable and conuenient time after, as the common Law requireth in case of abiuration for felony, as is aforesaid. And the Justices of peace before whom any such abiuration shall happen to be made, as is aforesaid, shall cause the same presently to be entered of Record before them, and shall certifie the same to the Justices of Assises and Gaole deliuerie of the said Countie at the next Assises or Gaole deliuerie to be holden in the same Countie. And if any such offendor which by the tenour and intent of this Act is to be abiured, as is aforesaid, shal refuse to make such abiuration as is aforesaid, or after such abiuration made, shall not go to such hauen, and within such time as is before appointed, & from thence depart out of this Realme according to this present act, or after such his departure shall returne or come againe into any the Qu. Realmes or Dominions, without her speciall licence in that behalfe first had and obtained: Then in euery such case the person so offending shal be adiudged a felon, and suffer as in case of felony, without benefit of Clergie. If any person or persons that shal at any time offend against this Act, shall before he or they be so warned or required to make abiuration, according to the tenour of this Act, repaire to some Parish Church on some Sunday, or other Festiuall day, and then and there

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heare diuine Seruice, & at Seruice time before the Sermon, or reading of the gospel, make publike and open submission and declaration of his and their conformity to her Maiesties Lawes and Statutes, as in this Act is hereafter declared and appointed: That then the same offendor shall thereupon be cleerely discharged of and from all the penalties and punishments inflicted or imposed by this Act for any of the offences aforesaid. Prouided that no Popish Recusant or feme couert shalbe compelled to abiure by vertue of this Act. Prouided also that euery person that shall abiure by force of this Act, or refuse to abiure, being thereunto required, as is aforesaid, shall forfeit and lose to her Maiestie all his goods and cattels, and all his lands, tenements, and hereditaments, during his life onely, and no longer. But his wife shall not lose her dower, neither shall his blood be corrupt. S. Felonie by Stat. 9.

Sta. 35. Eliz. 2

17 By a Statute made Anno 35. Eliz. 2. (intituled an Act for the restraining of Popish Recusants to some certaine place of abode) it is ordained, That Recusants not conforming themselues to the obedience of the Lawes of this Realme, in comming to the Church to heare diuine seruice, which shall not vpon the request of two Iustices of Peace, or Coroner of the same Countie, abiure the Realme, and depart from the same, and not returne without the Queenes licence, shall be adiudged felons, and suffer and lose as in case of felonie, without benefit of Clergie. S. Felonie by Stat. 10.

Popish Recusants shall abiure the realme.

Sta. 3. E. 1. 10

18 By the Statute of Westm. 1. made Anno 3. E. 1. it is enacted, That he which committeth trespasse in parkes or ponds shall abiure, if he cannot find suretie no more to doe the like offence. But that abiuration is not for felonie, neither shall he forfeit his lands or goods.

Abiuration of a Trespasser.

Pleading

Pleading Not guiltie.

HAuing made mention of one of the pleas which a prisoner brought to the barre to be arraigned of Treason or Felonie doth plead, viz. of the Confession of the offence, and shewed how many sorts of Confessions of felonie the Law doth take notice of, & by what means she doth proceed against the parties confessing: I am now to treat of a second, or one other plea, that the prisoner vpon his arraignement doth pleade in his owne defence, which is the plea of Not guiltie. For when a prisoner by an Appeale, or an Indictment, is charged with treason, or felonie, he may estrange himselfe from the offence, if he will, and ioyne the same issue, which the defendant oft times doth in an action of Trespasse, and some other personall actions, viz. he may pleade and take for his issue, Not guiltie. This plea of not guiltie is the most common and vsuall plea, that hee which is arraigned of treason or felonie, hath to pleade vpon an Indictment, or an Appeale: and it is the plea whereunto euerie person that is arraigned shal be enforced, vnlesse it be in speciall cases, viz. where he hath matter of Iustification, or matter in Law to plead. And this plea of Not guiltie doth tend to the fact, that is to the felony, and therefore it receiueth great fauour in law: for the Law doth allow this plea to him who is arraigned after he hath pleaded in abatement, or barre of the Appeale, or Indictment, so that his barre doe not comprehend such matter as doth confesse the felonie (as a release of the appellant, or the kings pardon.) And that plea he shall haue also, though one of his pleas were matter in law: for though those pleas do require diuers trials, yet in fauour of life he shal haue both those pleas, aswell as he shall haue when he doth pleade matter triable by the Bishop, or by Record, viz. and moreouer not guiltie. Which pleas he shall haue notwithstanding he doe not conclude, moreouer not guiltie, that is to say, he shall come time enough to pleade not guiltie after the matter triable by the Bishop, or by Record, is found against him. And the maner of pleading in all those cases is to pleade his plea, and to pray allowance thereof, and ouer to the felonie not guiltie.

Pleading not guilty the most common plea.

7. Ed. 4. 15. 4. H. 6. 15. 4. H. 7. 5. 10. H. 4. 4. 9. H. 4. 2. 28. Ed. 3. 91. 22. Ed. 4. 39 27. Ass. pla. 3. 14 Ed. 4. 7.

Pleading not guilty after other pleas.

Vpon the plea of not guiltie no councell allowed.

2 Vpon this plea of onely not guiltie, the partie indicted shall not haue councel learned in the law to plead for him, or to say any thing in his behalfe in the same plea (vnlesse it be in an Appeale, which is the suit of the partie) for when the offendor is put to answer to an Indictment of treason or felonie, hee must answer it in proper person, and not by Atturney, or councell learned: for this

this plea of Not guiltie doth tend to the fact, the which the party himselfe doth best know, and therefore he can best make answer vnto it. And if his councell learned should pleade his plea for him, and defend him, it may be that they would be so covert in their speeches, and so shadow the matter with words, and so attenuate the proofes and evidence, that it would be hard or long to haue the truth appeare. Also if the partie himselfe defend it, peradventure his conscience will pricke him to vtter the truth, or his countenance, or gesture
9.Ed.4.2. will shew some tokens thereof, or by his simple speeches somewhat may bee drawne from him to bolt out the veritie of the cause, which would not be won of men learned in the Law, who endevour to speake prouidently, and artificially, which be the causes that the offendor shal answer in his owne person, and not by councell learned. And yet if the plea of the partie indicted be such that
1.H.7.15. 12.Eliz.Dier 296. 7.H.4.36. it doth exceed his learning and knowledge to answer, and pleade vnto, then he shal haue learned councell assigned vnto him, though it be against the king. And one that is in the Court at the time of the indictment or arraignement of a prisoner, may as Amicus Curiæ, informe the Court that there is a defect in the indictment, to the benefit of the prisoner.

Where councell shall be allowed.

Informing the court of a default.

Triall

Triall by Battell.

THere is an auncient triall of the plea of Not guiltie by the common law, much vſed in former ages, which is triall by combate, viz. by Battell, which triall the defendant in an Appeale of felonie may chuſe, and combate with the Appellant, for the triall if he be guiltie or not of the felonie whereof the Appellant hath commenced his appeale againſt him. And if the Appellée hath ſo good ſucceſſe in that battell, that hée doth therein vanquiſh the Appellant, he ſhal barre him of his appeale for euer. And though this triall by battell is not ſo much in vſe as it was in the raignes of king Edward the 3. king Richard the 2. and king Henry the 4. yet is it at this day lawfull, and not ſo much diſuſed, but it may be put in practiſe in an appeale, if the Defendant will, and that there be no lawfull counter-plea thereof: Or elſe the defendant in an appeale may at his choice pleade not guiltie, and referre himſelfe to be tried by the countrie. This triall in an appeale by battel ſhalbe betwéene the appellant and the appellée themſelues, in their owne perſons, and not by Champions (as it is in a writ of Right.) And this triall by battell is an ancient Law of this Realme, and it is alſo put in practiſe and allowed by the Ciuill Law; which it is thought the Romans learned and embraced, euer ſince that renowned combate that was fought in the time of Tullus Hoſtilius third king of the Romans, and of Metius Suffetius dictator of the Albans, betwéene the thrée brethren Horatij Romans, and the thrée brethren Curiatij Albans, by the conſent and in the preſence of both the Captaines and Armies, for the perpetuall gouernement of both the kingdomes: wherein M. Horatius vanquiſhed, and ſlue in the field the thrée Curiatij, who preſently before had killed his other two brethren, and by that meanes obtained to the Romans the perpetuall gouernment of the citie and countrey of the Albans, and deliuered his owne nation from continuall ſeruitude.

Triall by battell, or by the countrey.

37 H. 6. 3.

Tit. Liu. lib. 1.

The forme of triall by battel.

2 The order and forme of triall by Battell is this: when the defendant in an appeale hath pleaded not guiltie, ready to defend the ſame by his bodie, hée muſt caſt his gauntlet into the Court, and if the Plaintife will reioyne to the battel, he muſt take vp the gauntlet: But if the Plaintife will counterpleade the battell, then hée muſt let the gauntlet lie: and then the Defendant may demurre in Lawe thereupon, if hée doe let his gauntlet lie. If it be in an appeale of death, and that the Appellant and the Appellée doe ioyne in wager of Battell, the Appellant ſhall rehearſe his appeale word by word, as he did at the firſt, and the Appellée ſhal likewiſe make his defence, as he did at the firſt: then the Defendant ſhal wage the battell in this maner, viz. Thomas the Appellée ſhall with his left hand take I. the Appellant by the right hand, and lay his

Fitz. Cor. 385.

27.Ed.3.24. 27.Ass.pl.10. 9.H.444. his owne right hand vpon a booke, and say thus: Heare you this, you man, which do call your selfe Iohn by your name of baptisme, that I man, which do call my selfe Thomas by name of baptisme, such a day, and such an yeere, did not kill William your father by name, as you do surmise, neither am I guiltie of this felonie, so help me God, and shall kisse the booke: and this I will defend against you by my bodie, as this Court will award. And after I. the appellant shall with his left hand take T. the appellee by the right hand, and lay his owne right hand vpon the Booke, and say in this manor: Heare you this, you man, which by name of baptisme do call your selfe Thomas, that you furiously such a day, and in such a yeere, did kill William by name, my father, so help me God, and shall kisse the booke: and this I will iustifie against you by my bodie, as this Court wil award. And the Court shal appoint them a day to make their combate, and the appellee shall put in pledges to the Court, to performe the battell, and to defend himselfe: and the plaintife shall put in pledges to deraigne the battell at the day assigned; and the appellant shall goe at libertie, and the appellee shall be kept in prison at ease, and haue sufficient meate and drinke. And the Marshall shall apparell the appellant and the appellee both alike at their owne costs, the night before the combate shalbe fought, to the end that they may be in the field the next morning, ready to performe the combat, by the sunne rising. And the appellees head shall be polled, but not the appellants: and the Marshall shall bring them attired into the field ready to performe the battell. Which combate shall be tried before the Iustices, who shall cause proclamation to be made when they be set, and the appellant and the appellee be within the lists, ready to atchieue the combat, That none, but the two combaters shalbe so hardy to stirre, or make any noise, whatsoeuer he shall see, or heare, whereby the battell may be disturbed: and whosoeuer shall doe anie thing contrarie to the said proclamation, shall be imprisoned a yeere and a day.

19.H.6.25. Br. Battel. 16 Bracton de coron. ca. 21.

Britton.

And they shall fight with weapons of small length, being bare headed, and hauing their hands and feet bare, with two staues of one length, horned at both ends. And either of them shal haue a Scutchian soure cornerd, without anie yron, for that one shal not hurt the other with the yron. And if the appellee can defend himselfe vntill starres may be seene in the firmament, then he shall goe quit from the appellant. And also when the appellant and the appellee be in the field readie to ioyne battell, or in the Battell, it is a sufficient vanquishment if the appellant will confesse his appeale to be false: for by this acknowledgement, he shalbe adiudged to be ouercom in the field, and barred of his appeale for euer. And on the other side, if the appellee doe confesse himselfe in the field to be vanquished, he shalbe presently hanged: as in an appeale the defendant pleaded not guiltie, and made his choice to trie it by Battell, and as they were in the combate, the appellant cast the appellee to the ground, and did grieuously beate him, and the Iustices sent for the appellee, and when he was brought vnto them, they demanded of him, if he would any more of the battel, or not; who answered, that he would not: he said further, that by the oth which hee had taken, hee was not guiltie of the felonie whereof hee was appealed: to whom the Iustices said, That if he would anie more of the battell, he should be laid in the same sort that he was when they sent for him: but he answered, that he would no more of the battell, and therefore he was presently hanged.

Bracton de coron. ca. 21.

21.H.6.14 Fitz.cor.98.

Bracton de coron. ca. 21.

19.H.6.35.

3 The reason why in an appeale the Defendant shall be admitted to trie his cause by Battell, is, for that no euident or probable matter doth appeare against him to proue him guiltie of the felonie whereof hee is appealed, but onely

The reason why the Defendant may

be tried by battell in appeale.

only the bare accuſation of the Appellant, which is no witneſſe of credit in his owne cauſe. And therefore ſeeing the Appellant doth demaund iudgement of death againſt the Appellée by an appeale, and hath no other probable euidence to attaint him, but his owne accuſation, it is more reaſon, that the appellant ſhall aduenture his life with the appellée for the triall thereof, if the defendant do require it, than to put the triall thereof vpon the country (which for default of euidence may be ignorant of the truth therof, and ſo giue a falſe verdit) and by that means to leaue it to God (to whom the truth of all things be knowne) to giue the verdit in this cauſe, by attributing the victorie or vanquiſhment to which partie it ſhall pleaſe him.

Counterpleas to the battell.

4 If the Appellant haue anie vehement preſumption, or ſufficient teſtimonie, to proue that his appeale is true, it will be a good counter-plea, and ſufficiently ſerue him to put the appellée from his triall by Battell: As, if the Defendant were indicted of this Felonie before the appeale commenced, or was taken with the manoure, or was taken with a bloody knife, or other weapon, ouer the bodie of him that was ſlaine, or were vnto him, whereby there was vehement ſuſpition that he killed him, or that the Defendant did lie alone in the houſe with him that was killed, or that he and others did lie in the houſe with him that was ſlaine, and receiued no blowes or wounds in his defence, or that he made no Huy and Crie after the theeues or murderers to apprehend them, or that he will not confeſſe which of thoſe that were in the houſe with him, did kill the man that was ſlaine, or committed the felonie that was done, or that he receiued the man that was ſlaine into his houſe, which was ſeene to goe in aliue, and after was found dead there, and no meane proued how he came by his death. 22. Ed. 4. 19. 20. Ed. 4. 6. 14. Ed. 4. 7. 4. Aſſ. pla. 1. Bracton de coron. c. 18. Britton.

Taken with the manoure.

5 If the Defendant be taken with the manoure (as in an appeale of death, with a bloody knife, or other weapon) he ſhalbe barred from waging of battell. And ſo it ſhall be if he be taken with the manoure in an appeale of Robberie, which manoure the plaintife muſt bring into the Court at the time when the Appellée doth offer to ioyne in battell, or otherwiſe he muſt plead that the Appellée was taken with the manoure, which manoure he would haue brought into the Court, but that he was not able to bring it: or elſe he may ſay that the manoure is in the poſſeſſion of another, and pray the Court to write for it. To which manoure when it commeth into the Court, the defendant ſhal haue no trauerſe, or other exception, if the thing brought into the Court for the manoure, do not varie from thoſe goods, or things which be contained in the Appeale. And in appeale of robberie, if the Appellée be apprehended vpon freſh ſuit by Huy and Crie, and ſome of the money robbed be taken in his cuſtodie, this is a ſufficient taking with the manoure to put him from waging of Battell, though the money cannot be knowne from other money. And the reaſons why in an appeale of Robberie, the defendant being taken with the manoure, ſhall not wage Battell againſt the Appellant, be, for that by the Appeale the plaintife doth endeuour to attaint the Appellée of felonie, and alſo to haue his goods againe. And it may be, that if it ſhould be tried by Battell, the Appellée might vanquiſh the Appellant in combat (though the Appellée be guiltie of the felony) and by that meanes alſo retaine his goods ſtollen, without cauſe. And the manoure was accounted ſo pregnant an euidence in former ages, that the Iuſtices would as readily arraigne a priſoner vpon the manoure taken in his poſſeſſion, as vpon an indictment. 7. H. 4. 44. Fitz. Cor. 236. 4. Ed. 3. 9. 22. Ed. 4. 19. Fitz. cor. 375.

Taken with the manoure.

6 If

6 It is alſo a good counter-plea to the battell, for the Appellant to ſay, that the defendant when he was taken or arreſted for that felonie whereof the appeale is ſued, and therefore impriſoned, did breake the priſon, and eſcaped, or did what he could to eſcape: for it is a very great preſumption againſt him, that he is guiltie of the felonie whereof he is appealed, in that he did breake the priſon and flie, or would haue fled for the felonie: and that he did not relie vpon, and truſt to his innocencie, and be iuſtified and tried by the law. And the Appellée may reply to that counter-plea, and trauerſe the arreſt for felonie, or the breaking of the priſon, if he will, or he may plead the Kings pardon for the breaking of the priſon: which trauerſe or pardon being tried, or allowed, he ſhal be reſtored to his triall by battell.

Breaking of priſon.

Fitz. Cor. 251. 281. 2. Aſſ. p. 6. 2. Aſſ. p. 3. Fi. Cor. 154. 157.

7 As there be impediments of the defendants part, why he may not wage battell againſt the appellant, ſo be there lets of the appellants part, that the appellée cannot wage battell againſt him: for as vehement preſumptions of the defendants guiltineſſe be cauſes to put him from waging of battell, ſo be vehement preſumtions of the appellants infirmities, or weakeneſſe, ſufficient barres to exclude the appellée from triall by battell with him. As, if the appellant be within the age of fourteene yeares, or aboue the age of threeſcore and tenne yeares, or within orders, or a woman, or be maihemed; whether he were maihemed by the appellée at the time that the ſayde appellée robbed him or at any other time; or (as ſome doe affirme) whether he was maihemed by the appellée, or by any other. And ſome doe holde it for Lawe, that if the appellant be aboue the age of threeſcore yeares, the appellée ſhall no more wage battell againſt him, than againſt an Infant within age, or a woman. But if the appellée will wage battell being of that age, he may, for though hee may diſcharge himſelfe of battell, in reſpect of his ſayde age, if hee will, yet in that the Lawe hath giuen him his choice, whether he will be tried by battell, or by the Countrey, hee may refuſe the benefit of his age, and wage battell.

Lets of triall by battell on the plaintifes part.

Fi. Cor. 230. 208. 22. E. 4. 20. Bracton.

8 In ſome caſes the priuiledge of the perſon of the appellant ſhall put the appellée from the triall by battel with him: as the perſon of the King, when the defendant is arraigned at his ſuit in an appeal; for in an arraignment vpon an Indictment at his ſuit, the partie indicted ſhall not wage battell, for the vehement preſumption that the Indictment is true, being found by the othes of twelue lawfull men of the Countrey. And as the perſon of the King ſhall be exempt from battell, ſo ſhall all other, to whom the King ſhal pleaſe to grant ſuch an exemption: As in former ages ſuch a grant hath beene made by ſome King of this Realme, to the Citizens of London, that battel ſhal not be waged againſt any of them in any appeale whatſoeuer, brought by any of them. And if a Citizen of London will bring an appeale againſt another, and the defendant will offer to wage battell with him, though the appellant would refuſe the benefit of this priuiledge, and ioyne battell with him, yet the battell ſhall not bee performed; for the Mayor and Comminaltie of London muſt ſue a writ out of the Chauncerie, directed to the Iudges, where that triall ſhould be made, rehearſing their libertie, and pray allowance therof, to ſtay the triall by battell. And though in the foreſayd caſe (and other caſes, where counter-pleas to battell be pleaded) the plaintife doth count, that if the defendant will denie it, hee is ready to proue it by his body, yet the defendant in his plea cannot take aduantage thereof, for thoſe be but words of forme, and not of ſubſtance:

Priuiledge of the Appellats perſon.

The King.

Citizens of London.

Pl. com 335. Fitz. Cor. 125 259. Fitz. Cor. 125.

and notwithstanding this conclusion, he may take his trial by the countrie, or otherwise as the Law will.

9 By the Statute of 2ñ 6.R.2. it was enacted, That if any Noble mans daughters, Ladies, or other women be ravished, and after the same rape committed, doe consent to the Ravishers, the husbands of such women (if they haue husbands) or if they haue no husbands living, then their fathers, or other their next kinsmen in blood, shall haue the suit to prosecute, and may pursue against the same offendors and ravishers in this behalfe, and to convict them of felonie, though the same woman after the Rape doe consent to the Ravishers. And in this case the defendant shall not wage battell, but the truth of the matter shall be tried by the countrey. S. Felonies by Stat. 2. 6.R.2.6.1

No wager of battell in appeale of Rape.

10 If one man doe appeale diuers men of one felonie, and they all ioyne in battell with the Appellant, he must fight with them all, one after another, if it doe not so chance that hee is slaine by one of them, before he can performe the battell with the residue: which if it happen, all the residue of the defendants shall be discharged of the appeale. But if when the Appellant doth come into the field to fight with one of the Appellees, he will then confesse his appeale to be false towards him, yet that shall not discharge the residue of the appeale, but they shall proceed in their triall with the appellant. And likewise if one man be appealed by three men of seuerall felonies, and he doe plead not guiltie, ready to trie it by his bodie, in this case hee must fight with them all, one after another, and though hee doe vanquish or kill one of them, this will not discharge him against the other. But if three men doe appeale one man but of one felonie, then if the Appellee doe vanquish one of them, he shalbe discharged against the other two. And in that case if the said three Appellants be Approuers, then the other two shalbe hanged. 47.E.3.5. 19.H.6.35. Fitz. Cor. 98. Bracton de cor. cap. 19. 7.Ed.3.12.

One fighting with seuerall men.

11 And all that is before written touching Triall by Battell, may be applied, as well to the appeale of an approuer, who confesseth himselfe to bee a felon, as to an appeale commenced by a true man.

In Appeale by approuer.

12 If a man be appealed of Felonie, and wageth battell with the appellant, and after hee doth become blinde by infirmitie, and not by his owne procurement, he shall be discharged of the battell: and so it is in a writ of Right: for in this case the appellee hath pleaded such a plea as the Lawe doth allowe him: and his disabilitie to performe it commeth by the act of God. But if after the Defendant hath waged battell with the appellant, the same appellant shall become blinde, by what meanes soeuer, the appellee shall bee arraigned at the Kings suite. S. Appeales 96. Fl. Droit 59.

The Appellee wageth battel, & then becommeth blinde.

Triall by Peeres.

When the Defendant hath pleaded Not guiltie to an appeale, or an indictment, then the matter commeth to bee tried betweene the King and him, or the appellant and him, whether he bee guiltie, or not. If it be in an appeale, it may be tried by Verdict, or by Battell, as the appellee will, saving in certaine Cases: But vpon an Indictment there is no triall by Battell, nor otherwise, saving onely by Verdict. In an Indictment of treason or felonie against one of the Peeres of the Realme, the triall is by his Peeres, which manner of triall in an appeale is not allowable. Triall of the plea Not guiltie.

2 When a Peere of the Realme, and Lord of the Parliament is to bee arraigned vpon any treason, or felonie whereof he is indicted, and whereunto he hath pleaded Not guilty, the King by his Letters patents shall assigne some great and sage Lord of the parliament to be high Steward of England for the day of his arraignement: who before the same day shall make a precept to his Serieant at Armes, that is appointed to serue him during the time of his commission, to warne to appeare before him eighteene or twentie Lords of the Parliament vpon the same day. And then at the day appointed, when the high Steward shall be set vnder the cloth of Estate, vpon the arraignement of the prisoner, and hath caused his Commission to be read, the same Serieant shall returne his precept, and thereupon the Lords shall be called, and when they haue appeared, and be set in their places, the Constable of the Tower shalbe called to bring his prisoner into the court, who then shal bring the prisoner to the bar. And then the high Steward shal declare vnto the prisoner, the cause why the King hath assembled thither those Lords and him, and perswade him to answer without feare. And then he shall cause the Clerke of the Crowne to reade his Indictment vnto him, and to aske him if he be guilty, or not; whereunto when he hath answered Not guilty, the Clerke of the crowne shall aske him how he will be tried, and then he will say, by God and by his Peeres. And then the Kings Serieants and Attorney will giue Euidence against him, whereunto when the Prisoner hath made answere, the Constable shall bee commaunded to retire the prisoner from the Barre to some other place, while the Lords doe secretly conferre together in the Court: and then the Lords shall rise out of their places, and consult amongst themselues, and what they affirme, shall be done vpon their honours, without any othe

1.H.4.1. 13.H.8 13. 10.Ed.4.6. The arraignment of a peere of the Realme.

to be minißred vnto them. And when they all, or the greateſt part of them be agreed, they ſhal returne to their places, & ſit downe. And then the high Steward ſhall aſke of the yongeſt Lord by himſelfe, if he that is arraigned be guilty, or not, of the offence wherof he is arraigned; & then of the yongeſt next him, and ſo of the reſidue, one by one, vntill he hath aſked them all: and euery Lord ſhall anſwer by himſelfe. And then the high Steward ſhal ſend for the priſoner againe, who ſhalbe led to the bar; to whom the high Steward ſhal reherſe the verdict of the Peeres, and giue iudgement accordingly. But if an Earle, the ſonne and heire apparant of a Duke, or a Lord, the ſon and heire apparant of a Marques, or Earle, be indicted of high treaſon, he ſhalbe tried by Knights & Gentlemen, & not by Peeres: for he is not an Earle by Creation, but by Natiuity. But if he be of dignity by creation, and a Lord of the parliament he ſhal be tryed by his Peeres. 38.H.8.Br. Treaſon. 2

3 The forſayd manner of Triall ſeemeth to be appointed by the ſtatute of Magna Charta, which hath ordained, That no free man ſhalbe taken, or impriſoned or diſſeiſed of his freehold, liberties or free cuſtomes, nor ſhalbe outlawed, baniſhed, or by any meanes brought to deſtruction: Neither wee will paſſe or ſit in iudgement vpon him, but by the lawfull iudgement of his Peeres, or by the law of the Realme: We will not ſell, denie, or deferre iuſtice or right to any. It appeareth by this ſtatute of Magna Charta, that a Peere of the Realme ſhalbe tried by his Peeres only, in caſe where he is indicted at the kings ſuit of treaſon, or felony, for the words of the ſtatute be (wee will not paſſe or ſit in iudgement vpon him but by his Peeres:) But if an appeale of murder or other felony be ſued by any common perſon againſt a Peere of the Realm, he ſhalbe tried by common perſons, and not by his Peeres. And becauſe there was no mention made in the ſaid ſtat. of Magna Charta, how women, Ladies of great eſtate, becauſe of their husbands Peeres of the Realme, married, or ſole, viz. Ducheſſes, Counteſſes, or Baroneſſes, ſhould be put to anſwer, nor before what Iuſtices they ſhould be iudged vpon indictments of treaſons or felonies by them committed: and for that the ſaid ſtatute of Magna Charta doth onely make mention of a man: Therefore by a ſtatute made Ann 20.H.6.9. it was enacted, That ſuch Ladies of great eſtate, viz. Ducheſſes, Counteſſes, and Baroneſſes, which ſhall be indicted of any treaſon, or felony by them committed, whether they be married, or ſole, ſhall bee brought to their anſwer, and put to anſwer, and iudged before ſuch Iudges and Peeres of the Realme, as Peeres of the Realme ſhould be, if they were indicted or impeached of ſuch treaſons or felonies committed.

By whom Peeres appealed ſhalbe tried

10.Ed.4.6.

By whom Ladies ſhalbe tried.

31,32,H.6,9.

Biſhops.

4 None of the foreſaid ſtatuts haue bin put in practiſe to extend to Biſhops, though they enioy the name of Lords of the Parliament, for they haue that name of Biſhops in reſpect of their office, or function, and not in reſpect of their nobility; neither haue they places in parliament in reſpect of their nobility, but in regard of their poſſeſſions, being ancient Baronies annexed to their dignities. If a Peere of the Realme be indicted of treaſon, or felony, he may be thereupon arraigned in parliament, if it ſhal pleaſe the K. and then the Lords ſpirituall ſhall make one Procurator for them, for that by the Cannon Lawe they cannot condemne any man to death. A Biſhop was arraigned in the Kings Bench, (& not by any Lords of parliament) for that he came to the parliament by ſummons, and departed without licence: and becauſe this was an offence, as well to the K. as to the Peeres; and the King may commence a ſuite where

Arraignment in parliament.

10.E.4.6.

3.R.3.19.

he

he please for a trespas done to him, therefore this was accepted a lawfull indictment, though the complaint was made in an inferiour Court, for an offence done in an higher.

19.& 20.El. Dy.fo.360.

5 If an Earle, or a Lord of Ireland doth commit treason in Ireland by open rebellion, he cannot be arraigned and put to his trial therefore in England: for he can neither be tried by his Peeres, nor by any Jury of twelue men in England, because he is not a subiect of England, but of Ireland; and therefore his triall shalbe in Ireland. And the custome there is to attaint a Peere by parliament, and not by his Peeres.

Trial of treason committed in Ireland.

6 This order of trial by the Peeres is likewise to be obserued, where one of the Peeres of this realme is indicted but of misprision of treason or felony: in which triall the same forme shalbe kept, as it shall be, where any Peere is indicted of treason or felony, and arraigned thereupon. And the number of Peeres which shall be to trie a Peere indicted of treason, felony, or misprision, shall bee twelue at the least, and more if it shall please the King.

Misprision.

The number of Peeres at the Triall.

7 In euery case where any offence or fact is of new made treason by any Statute, the Lords of the parliament, and Peeres of the realme offending therein, shall haue their triall by their Peeres, though the Statute doth not prouide for it by speciall words: as other inferior persons offending in the like crimes, shal haue their triall by the verdit of xij. men, their peeres, viz. their equals; so that the words which be commonly put into new Statutes, that Peeres of the realm offending therin, shalbe tried by their Peeres, be not of necessity inserted. But because the course of the common law is in some sort altered by the stat. of An 33.H.8.23 33.H.8.23. authorizing the King to grant a commission unto such persons, & into such shires as he will, for the triall of any murder committed in any other county or place of the Realme whatsoeuer: And also by the Statute of 35.H. 8.35.H.8.2. 8.2. giuing the King like power to direct a commission into any county of this Realme, and to any persons that he will, for the trial of treasons, and misprisions of treasons, commited out of the realm: yet for that the triall in both those cases might be made by such persons, as the common law hath appointed, viz. of peeres by their peeres, it is so prouided and ordained by the speciall words of both those Statutes.

Triall by Peeres in all cases of treason and felony.

Triall by the Countrie.

Triall by the Countrey.

1 TRiall by the countrie, is a triall by twelue common persons of that vicinage or neighborhode, where the treason or felony was committed: which kinde of triall seemeth also to be warranted and approued (though not at the first begunne) by the before rehearsed Statute of Magna Charta, which sayth: Neither shall any passe or sit in iudgement vpon him, but by the lawfull iudgement of his Peeres, or by the Law of the Realme. And thereupon it is accordingly vsed, that Knights, Esquiers, and Gentlemen of great estate being indicted of treason or felony, bee tried by their Peeres, viz. by their equalls in degree, being also Knights, Esquiers, Gentlemen, or Merchants of good estate: and inferiour persons bee likewise tried by their Peeres or equals, viz. by men of their owne degree, or (most commonly) by men of better or greater estate or degree. St. 9. H. 3. 29. 1. M. Dy. 99.

2 If he that is charged to be an offendor in petit treason, murder or felony, do plead to an Indictment found against him matter triable by an other county, than the County which did indict him, although by the common Law hee ought to haue beene tried in that forraine county; yet now by the Statute of Anno 22. H. 8. he shalbe tried by the county which did indict him: the words of which Statute be these, viz. For more speedy trialls of murders & felonies, Be it enacted, &c. That all manner of forraine pleas, triable by the Country, hereafter to be pleaded by any person or persons arraigned vpon any Indictment for any petit treason, murder, or felony, shalbe forthwith tried before the same Justices, before whom such persons shall be arraigned, and by the same Jurors of the same county, that shall trie the petit treason, murder or felonie, whereof he shal so be arraigned, without any further respite or delay in whatsoeuer county, or counties, place or places of this realm, the matter of the same pleas be supposed or alleaged. This statute maketh no mention of high treason, and therefore forraine pleas in high treason remaine to be tried in those forraine counties, as they were at the common law; And so be they in an appeale: for this Statute extendeth to Indictments onely. But if A. do strike B. vpon the Sea, and there giue him a mortall wound, whereof B. dyeth in the Countie of L. in this case A. shall be discharged of the death of B. for they of the Countie of L. cannot inquire of the death without inquiry of the wound, and of the wound they cannot inquire, because it was giuen vpon the Sea, and not in any Countie or place in this Realme. And they of the Admiralls Jurisdiction can not inquire as of a felonie of the wound, without inqui-

Triall of forraine pleas. 22. H. 8. 3.

Appeale.

A man striken vpon the Sea dieth vpon the Land. Cokes 2. 93.

inquiring of the death, and of the death they can not inquire, because it was
St. 13. R. 2 5. St. 15. R. 2. 3. within the bodie of a County, where, by the statute of 13. R. 2. et 15. R. 2. they are forbidden to meddle.

3 The proceſſe which shalbe awarded against the Jury to trye an issue in an appeale, is commonly a Venire facias, Habeas corpora, and Distringas; as it is vsed in other actions, saving in the Kings bench, for by the custome of
27. H. 6. 10. that Court, the first proceſſe against the Jury, is an Habeas corpora, and after a Distresse, without suing a Venire facias. And some say that in the K. bench they vse to haue no Habeas corpora at the first day, but a Venire facias, and then a Distresse, leauing out the Habeas corpora. The proceſſe which is to be awarded against the Jury, is for the most part intended in an appeale: for in an Indictment though they may graunt proceſſe against the Jury, yet it is not
Fitz. Enquest 55 vsed by the Justices of Gaole delierie, because they doe take the pannell, which is returned by the Shirife, without making any precept vnto him, for that they giue a generall commandement to the Shirif before their comming, to cause the Countrie to appeare before them. But so do not Justices of Myer and Terminer.

The Proceſſe against the Jurie.

Proceſſe in an appeale, not in an indictment.

4 Although by the common law, a Nisi prius is grantable for the King, but not grantable against the K. where he is party to the suit, or where the matter in question doth touch the Kings right, or where he is party thereunto (but by aide praier,) vnleſſe his Atturney will assent thereunto: yet in an appeale of Felonie, when the appellant and appellée be at issue, the Defendant may
21. H. 7. 34. haue a Nisi prius to pursue the same issue, if there be any default in the Plaintife, that he doth not pursue it with effect, though the King be in a sort party to that suit: for otherwise the appellée should continually remaine in prison to his vtter vndoing, and neuer haue remedy. Neither the Defendant in an appeale
14. H. 7. 7. 15. H. 7 9. 21. H. 6. 36. shall not haue a Venire fac' with a prouiso, vntil he hath assigned some default in the Plaintife in the pursute of it. And yet the Plaintife may at his pleasure stay the Defendant in proceeding further with his proceſſe, in praying a Tales vpon the Defendants proceſſe.

Nisi prius for the defendant in appeale.

5 Because diuers felons and murderers vpon vntrue surmises did oftentimes remoue as well their bodies, as their Indictments, by a Writte, and otherwise, before the King in his Bench, and could not by the order of the Law bee remaunded, and sent downe to the Justices of Gaole delierie, or of the peace, nor other Justices or Commissioners to proceede vpon them, after the due course of the common Law (for that a Record which is once remoued into an Higher Court, can not by the common Law bee sent backe to a more base and inferiour Court:) For the redresse whereof by a statute made Ann
St. 8. H. 8. 6. 6. H. 8. it was ordained, That the Justices of the K. bench (for the time being) haue authoritie by their discretions, to remaund and send downe as well the bodies of all felons, and murderers, brought and remoued, or that shall bee remoued or brought before the King in his Bench, as their indictments, into the counties whereas the same murders or felonies haue been committed or done, and to commaund all Justices of Gaole deliuery, Justices of Peace, and other Justices and Commissioners, and euery of them to proceed and determine vpon all the foresaid bodies and indictments so remoued, after the course of the common Law, in such maner as the same Justices of gaole deliuery, Justices of peace, and other Commissioners, or any of them, might or should haue done,

Remaunding of prisoners out of the K. Bench to be tried in the Country.

if the sayd prisoners or indictments had neuer bin brought into the said Kings Bench.

Triall of felonies committed by English man in Scotland.

6 By a stat. made Anno 4. Iac. it was enacted, That all offences of coniurations, witchcraft, & dealing with euill and wicked spirits, murder, manslaughter, felonious burning of houses and corne, burglary, robbing of houses by day, robberie, theft, the detestable vice of buggerie committed with mankind, or beast, and rape, heretofore done or committed since his Maiesties comming to the crown of England, or hereafter to be done or committed by any his Maiesties naturall borne subiects of this realme of England, or the dominions of the same, within the realme of Scotland, or the dominions thereof, and the accessories of, and to the same, shalbe from henceforth inquired of, heard, and determined before his Maiesties Iust. of Assise, or his Commissioners of Oyer and Terminer, or Gaole deliuery, being naturall borne subiects within this realme of England, and none other, by good and lawfull men of the Counties of Cumberland, Northumberland, Westmerland, or any of the sayd Counties, at the election of the said Iust. of Assises, or Commissioners, in like maner and forme to all intents and purposes (the alterations hereafter in this Act expressed, only excepted) as if such offences had béene done and committed within the same Shire where they shalbe so inquired of, heard, and determined, as is aforesaid. At which trials, for the better discouerie of the truth, and for the better information of the consciences of the Iurie and Iustices, there shall bee allowed vnto the party so arraigned, the benefit of such witnesses only to be examined vpon othe, that can be produced, for his better clearing, and iustification, as hereafter in this Act are permitted and allowed. St. 4. Iac. 1.

Witnesses allowed to him that is arraigned.

The prosecutors and witnesses bound to giue euidence.

7 Euery Iustice of peace of the counties aforesaid, vnto whom complaint shalbe made, shall haue full power and authoritie by vertue of this act, to bind ouer by recognisance in a conuenient sum taken to his Maiesties vse, as well the party prosecuting, as any witnesses which he shall desire to produce (so as the said witnesses may haue their reasonable charges first tendred vnto them) to prosecute and giue in euidence before such his Maiesties Iustices as aforesaid, as the case shall require. St. 4. Iac. 2.

The accessory tried, though the principall be not.

No clergy. No peremptory challenge aboue fiue.

The words of the Indictment.

8 Euery commander, procurer, councellor, abettor, comforter, receiuer, or other accessory of, or to any the offendors or offences aforesaid, so commited in Scotland, as aforesaid, offending within the realms of England or Scotland, shalbe produced, withall indicted, tried, iudged, and executed without delay, notwithstanding the principals, or any of them be not conuicted or attainted. And that no such offendor either accessorie or principall shall be allowed the benefit of his clergy, nor admitted to his peremptory chalenge of aboue the number of fiue. And that euery indictment of any of the offences aforesaid, so committed as aforesaid, shalbe aduinged of as good force in Law, notwithstanding the words (contra pacem, coronam, & dignitatem nostras) be omitted, as if the said words had been therein contained. St. 4. Iac. 3.

Euery Iuror must haue v. l. of freehold.

9 No Sheriffe, Undersheriffe, or other Minister, to whom it appertaineth, shall returne any Iurors to enquire of, or trie any of the offences aforesaid, so committed as aforesaid, except euery such Iuror shall haue freehold in possession, to the value of v. l. by the yeare in the county where such inquiry and triall shalbe, vpon pain to forfeit for euery Iuror that shalbe returned contrary to this St. 4. Iac. 1.

Act

Act, the ſumme of xl.l. to the K. and I. to be recouered by A. of debt, B. P. or I. in any of the K. courts at Weſt. wherein no E. P. or W. &c. And the offendor ſhall or may challenge any Iuror that ſhall paſſe vpon his life, for want of ſuch freehold, as aforeſayd.

St. 4. Iac. 1. 10 No naturall ſubiect of his Maieſtie, of the realme of England, or of the dominions of the ſame, ſhall for any the offences aforeſaid, committed within the realme of Scotland, or for being acceſſory to the ſame, forfeit any lands, tenements or hereditaments, either free, copie, or cuſtomary hold, neither ſhall the blod of ſuch offendor be corrupted, nor the wife loſe her dower; yet neuertheleſſe the ſaid offendors ſhal forfeit to his Maieſtie his heirs, and ſucceſſors, their goods, chattels, and credits whatſoeuer. The offendor ſhall forf. no lands.

St. 4. Iac. 1. 11 And forasmuch as it is intended, that an Act like vnto this ſhalbe ordained in the realme of Scotland, for the tryall and puniſhment of offendors, being his Ma. natural born ſubiects of the ſame realm, which ſhal commit any of the offences aforeſaid within the realme of England, or the dominions therof, and ſhall after eſcape, or returne backe into Scotland: Therfore be it enacted, That vpon complaint made by any of his ſubiects of the realme of England, to any of the Iuſtices of Aſſiſe, Commiſſioners of Oyer and Terminer, or gaole deliuery, or Iuſt. of the peace within the precincts of their ſeuerall commiſſions reſpectiuely, being naturall borne ſubiects within the realme of England, concerning any ſuch offences committed by any his ſubiects of the realm of Scotland, within the realme of England, in caſe where the offendor is returned into the realm of Scotland, as aforeſaid, the ſaid Iuſt. or commiſſioner, ſhal haue full power and authoritie, to bind ouer as well the ſaid party complaining, or proſecuting, as any witneſſes that he ſhall deſire to produce (ſo as their reaſonable charges be firſt tendred vnto them) by recogniſance in a conuenient ſum to his Maieſties vſe, to proſecute and giue in euidence within the Realme of Scotland: wherein if default ſhalbe made, and the ſame proued by certificat, or otherwiſe, before the Lord Treaſorer, Chancellor, and Barons of the Exchequer, or any of them in the Exchequer chamber, and a decree there made, that the ſame recogniſance ſhall ſtand forfeited: then the court of Exchequer ſhall thereupon proceed for the leuying of the debt of the ſaid recogniſance, as if it were adiudged forfeited by the courſe of the common law. A like Act made in Scotland. Binding the complainant or witneſſes to giue euidence in Scotland.

St. 4. Iac. 1. 12 On the other part, euery of his Maieſties ſubiects of the realme of Scotland, either party grieued, or witneſſe, which ſhall proſecute in any the caſes aforeſaid, within the realme of England, and therby ſhall haue occaſion to make his repaire hither, either voluntarie, or by the like bond (as is before expreſſed on the part of the realme of England) ſhall haue and enioy priuiledge and immunitie from all maner of arreſts, concerning all offences, or other cauſes, as well capitall as others, committed, done, or occaſioned, before he ſhall come into England as aforeſaid (except treaſon or wilful murder) ſo long as he or they ſhalbe neceſſarily going, comming, or abiding within the ſaid realme of England, for the proſecution of the ſayd offendors. Scottiſh men repairing into England not giue euidence, ſhalbe free frō arreſting.

St. 4. Iac. 1. 13 Prouided neuertheleſſe, that euery ſuch offence ſo committed as aforeſayd, ſhalbe laid and alledged in the indictment or other declaration, to be done and committed in the realm of Scotland, according to the truth of the fact, and not in the counties where the trial is limited, to be had and made as aforeſaid: The offence ſhall be laid where it is done.

any

any thing in this Act formerly contained to the contrarie notwithstanding.

He that is once tried, shal not be efsoons called into question.

14 Prouided, that if any of his Maiesties subiects of the realm of Scotland, shalbe proceeded with, and tried in the Realme of Scotland, vpon the prosecution of any party grieued, and vpon euidence in open Court, for any offence done or committed within the Realme of England, that no such person shall be efsoones called into question or proceeded with for the same fact, within the Realme of England, but that it shalbe lawfull for euery such person, to pleade and alledge for himselfe, vpon his arraignment, that he was formerly lawfully acquited, conuicted or attainted of the same offēce within the realm of Scotland, and that thereupon all further proceeding shall stay, vntill the court haue sufficiently informed themselues by certificat from the realme of Scotland, or by any other good waies, and means, of the truth of the said allegations, which if they shall find true, the said person shalbe forthwith discharged of all further impeachment or proceeding. 8.4.Iac.1.

None shall be sent out of England to receiue his triall

15 No naturall borne subiect of the Realme of England, or the Dominions of the same, shall for any High Treason, Misprision or concealement of High treason, Petit treason, or any other whatsoeuer offence or cause committed within Scotland, be sent out of England, where he is apprehended, to receiue his triall, vntill such time as both Realmes shall be made one in Lawes and gouernment. 8.4.Iac.2.

The Iurors shall allow of, or reiect the witnesses.

16 At all such trials the Iurors then and there sworne, or the greater part of them (who in respect of the great trust & charge which must now be laid vpon them, are by vertue of this act, as before appeareth, to be persons of better conditions and quality, than the law required heretofore for Iurors in trial of like offences) shall haue in their power and election according to their consciences and discretion vpon their othes, to receiue and admit only such sufficient, good, and lawfull witnesses vpon their othes, either for, or against, the party arraigned, as shall not appeare to them, or the greater part of them, to be vnfit and vnworthy to be witnesses in that case, either in regard of their hatred and malice, or their fauor and affection, either to the party prosecuting, or to the partie arraigned, or of their former euill life and conuersation. 8.4.Iac.3.

Triall by Peires.

17 Prouided, that if the offendor in any the cases aforesaid, shall be a Peere of the Realme, then his tryall therein shalbe by his Peeres, as is vsed in case of Felony or Treason, and not otherwise. 8.4.Iac.5.

1 Triall of him which woundeth a man in one county, whereof he dyeth in another. S. Principall &c. 16.

2 Triall of a felonie committed in one countie, and accessorie thereunto in another. S. Principall &c. 17.18.

3 Triall of Treason, Misprision of Treason, and Murders, where the King will. S. Indictments 10.

4 Indictments and trials of Treasons committed out of the Realme. S. Indictments, 11.

Challenge.

Challenge.

WHen the prisoner standing at the bar hath pleaded not guilty, and that the same issue is to be tried betweene the K. and him, or the appellant & him, the Law doth allow him to challenge, viz. calumniari, to take exception vnto, or to desire to haue removed, or put out of his Jurie certaine persons: And he may therein haue more fauor than either of the parties to a suit shal haue in other trials betweene party and party: For being arraigned of felonie, he may haue a peremptory challenge, in fauour of life, which is to say, challenge without shewing cause. And though he can shew no cause to challenge him that he doth challenge, yet if his phantasie or affection doth not stand vnto him, by this peremptory challenge he may cause him to be removed and put from the Jurie. And by the common Law this peremptory challenge was permitted to the nũber of 35. persons, viz. to so many as would make vp full three Juries (saving one man.) But sithence by a stat. made An 32. H. 8. it is enacted, that no person arraigned for any petit Treason, Murder, or felony shalbe from henceforth admitted to any peremptory challenge aboue the number of 20. And so by this Stat. the number is abridged in three speciall cases, viz. in petit Treason, Murder, and Felony: And so for High Treason peremptory challenge did remaine as it was at the common law, vntil it was wholly taken away by the stat. of an 33. H. 8. which did ordaine, That peremptory challenge should not thencefoorth be admitted or allowed in cases of High treason, or Misprision of treason: And yet after that, challenge was againe reuiued in cases of High treason, by a Statute made An. 1. & 2. P. & M. whereby it was enacted, that all tryalls hereafter to be had, awarded, or made for any Treason, shall bee had and vsed onely, according to the due order and course of the common Lawes of this Realme, and not otherwise. And then if all tryals in Treasons shall bee according to the common Law, peremptorie challenge shall be allowed vpon trial, according to the course of the common law, as well in Petit treason, as in High treason. A man being arraigned of High treason, and pleading not guiltie, certaine of the Jurors were sworne and tried, the residue being drawne forth by challenge, and the Enquest remaining for default of Jurors, at another day the defendant did peremptorily challenge some of those that were first sworne, and the challenge was allowed in fauour of life. And in an appeale of Robberie the defendant challenged a Juror for a cause which was tryed against him, and then the Jurie remayned for default of Jurors, and at another day he challenged the same Juror peremptorily,

Peremptorie Challenge.

St. 32. H. 8. 14

An. 32. H 8. 3

St. 33. H. 8. 23

St. 1. & 2. P. & M. 10.

32. H. 6. 30.

14. H. 7. 19.

2. R. 3. 13.

remptorily, and he was allowed so to do. This peremptory challenge is not to be taken, but where the life of the prisoner is in ieopardy by the trial. And therfore if a man be outlawed of treason or felony, & brought to the bar, & there doth plead misnaming, or some other plea in auoidance of the said outlawry: in that case he shall not haue his peremptory challenge, for that neither treason nor felonie is to be tryed by this issue, because they were at an end before by the outlawry. If two, three, foure, or more persons, be indicted or appealed, and arraigned of one offence, and one enquest is charged to trye them all, if one of those persons arraigned do challenge peremptorily any of those Iurors, he shall bee drawne, & put out for them all, though one or some other do desire that he may be sworne: for though they be al arraigned together, yet in the iudgemẽt of law it is seuerall arraignments, for that their offences be seuerall, & not one, though they be indicted of one offence, and so euery of the prisoners shal haue his challenge, so that he do not challenge peremptorily aboue the number of 20. persons. But if the Court will, it may diuide the panel, and also the Tales, & make them seuerall for euery of the prisoners, & then euery prisoners challenge shalbe by it selfe, and anaile himselfe only that maketh it.

Heurance in challenge. 9 Ed 4.27. Pl.Com. 100.

Challenge vpon cause. 2 Besides the foresaid peremptory challenge, which is grounded vpon opinion or phantasie, without cause, there is another kinde of challenge, which is called challenge vpon cause, and is not allowable but vpon reasonable and good cause, ordained by the common lawes or stat. of this realm: Whereof one challenge which was at the common law, & is also confirmed by stat. is a challenge of the indictors: for as Britton saith, when the defendant doth submit himselfe to be tried, by the countrey, and the Iurors do appeare at the bar, they may be challenged, & the prisoner may say, this man ought not to be of my Iury, for he did indict me, and I doe presume of him, and of all my indictors, that they doe carrie the same affection towards me now which they did when they indicted me: and this exception is to be allowed in case of death. And the same law is confirmed, and in a sort augmented by the statute de proditionibus, made Añ 25.E.3. by the which it was accorded, that no indictor shalbe put in Enquests vpon the deliuerance of the indictees, of Trespasse, or of Felonies, if he be challenged for that cause by him that is indicted. And, as it may appeare, this stat. is but a confirmation of the common law in this point, and so to be taken fauourably, and by that meanes it may be extended as well to Treasons as to Felonies. And also it may be construed, as well where the prisoner is indicted and arraigned vpon an appeale, as where hee is indicted and arraigned vpon the indictment, though the same be not contained, within the expresse words of the sayd Statute.

Britton. 27.Ass.p.123. Indictor. St.25.E.3.3. 8.H.4.3. 7.E.4.4.

Challenge for want of medietatẽ linguæ. 3 There is another challenge vpon cause, which is to the Array, and that is, when an alien is arraigned of Felonie, and pleadeth to an Issue, and the Enquest is returned all of English men, this is a cause of challenge, by force of the Statute of Anno 28.Edw.3. which did ordaine, That in all manner of Enquests and prowes which bee to bee taken or made amongst aliens and denizens, be they Marchants, or others, as wel before the Maior of the staple, as before any other Iustices or Ministers, although the King be party, the one halfe of the Enquest or prowe shall be by Denizens, and the other halfe of aliens, if so many aliens be in the towne or place where such Enquest or prowes is to be taken, that be not parties, nor with the parties in contracts, pleas, or other quarrels, whereof such Enquests or Prowes ought to bee taken. And if there

St.28.E.3.13

there be not ſo many aliens, then ſhall there be put in ſuch enqueſts or prowes as many aliens as ſhall be found in the ſaide Townes or places, which be not thereto parties, as afore is ſaide, and the remnant of denizens, which be good men, and not ſuſpitious to the one party, or to the other. At the common Law, before this ſtatute, & the ſtatute of 27.E.3. this Triall per medietatem linguæ might haue bin obtained by the kings grant: as, if the king had graunted to a company of aliens, viz. of Almaines, Frenchmen, &c. that when any of them was impleaded, the one halfe of the enqueſt ſhould haue bin of their owne language: and after, to make that a generall Law, the ſtat. of 27.E.3. was made. But ſeeing that ſtatute did not remedy the miſchief, where the king was party, the before rehearſed ſtatute of 28.E.3. was prouided, which maketh mention generally of aliens: therefore it is not materiall of what nation thoſe aliens are, which ſhall be of the enqueſt, ſo that they be aliens, though they be of an other nation than the party to the ſuit is. And becauſe this ſtatute was ordained for the benefit of aliens, and of none but of aliens, and for that there were in this Realme of long time aſſembled ſome ſtrangers together with many Engliſh vagrant Rogues and Vagabonds, calling themſelues Egyptians, which by their counterfeit ſpeeches, apparrell, and behauiour, could hardly bee diſcerned one from the other: Therefore by a ſtatute made Anno 22.H.8. it is enacted, That if it happen any outlandiſh perſon, calling himſelfe an Egyptian, or any ſuch ſtranger, to commit within this Realme anie murder, robberie, or felonie, and thereof to be indicted and arraigned, and to pleade not guiltie, or anie other plea not triable by the Countrey, then the Enqueſt that ſhall paſſe betweene the king and ſuch party, ſhall be altogether Engliſhmen. And by an other ſtatute made Anno 1.& 2.Ph.& Ma: it was ordained, That if anie of the ſaid perſons, called Egyptians, which ſhall be tranſported or conueyed into this Realme of England, or Wales, doe continue within the ſame by the ſpace of one moneth, that then he or they ſo offending, ſhall by vertue of this Act bee adiudged a felon and felons, and ſhall ſuffer death, loſſe of landes and goods, as in caſes of felonie, and ſhall vpon the triall of him or any of them be tried by the county, and the inhabitants of the county or place where hee or they ſhall be apprehended or taken, and not per medietatem linguæ, and ſhall loſe the benefite of Clergie, and Sanctuarie. And whereas the words of the foreſaid Statute of 28.Ed.3. be, That in all manner of enqueſts and prowes which are to be taken &c. thoſe words are not to be conſtrued of an Indictment, for that may be taken all of denizens, though it doe concerne an alien: But the ſtatute is to be intended of ſuch enqueſts, where the partie is admitted to his challenge, and ſo he is not vpon an Indictment: for the party which is an alien may vpon his arraignement haue the ſaide challenge in the array, to ſhew that in the pannell there is not medietas linguæ, according to the Statute, for he hath none other remedy being defendant. But if he were plaintife it ſhould be otherwiſe: for then before the Venire facias awarded, he muſt ſuggeſt, that he is an alien, and pray proces to ſommon the Jury de medietate linguæ, according to the ſtatute: and further, he muſt ſurmiſe in what partes beyond the ſeas he was borne, to the intent that men of the ſame countrey may be of his Enqueſt, if they may be had: and if they will not ſignifie that before the Venire facias awarded, he ſhall not ſuggeſt it after: neither ſhall he challenge the array, or polles for that cauſe, ſeeing it was his folly, that he toke not the benefit of the ſtatute in due time, and ſpecially when he knew himſelfe to be an alien. And whereas the words of the foreſaid ſtatute of 28.E.3. be (That are not parties, nor with the parties in contracts, pleas, or other quarrelles,

Sta. 27.E.3.8.

M.22.Ed.3. 24.

Sta. 22.H.8. 10.

Egyptians.

Stat. 1.& 2. P.& M.4.

31.H.7.32.

Lib. Intr.

M.21.E.3.20

whereof ſuch enqueſts or prowes ought to be taken) By theſe words it doth appeare, that the makers of this Statute would, that the parties ſhould haue their challenges to the polles in thoſe ſaid caſes. And therefore, though they haue not expreſſed but certaine caſes, which induce hatred, or malice, yet by the mentioning of them, it ſeemeth, that they intended to allow all challenges, which do induce fauour, or otherwiſe. And the foreſaid ſtatutes of 27.E.3. & 28.E.3. do onely extend, where there is but one onely of the parties to the ſuit an alien: for if they be both aliens, the enqueſt ſhall be all of Engliſhmen, and not de medietate linguę, vnleſſe the plea be depending before the Maior of the Staple, and both the parties be marchants of the Staple, or officers of the Staple, in which caſe then by the Statute of 27.E.3.8. the Enqueſt ſhall bee all of aliens. 21.H.6.4.

Treaſon. If an alien be indicted of high treaſon, he ſhall not haue his triall per medietatem linguæ, but the triall ſhall be according to the due order and courſe of the common lawes of this Realme. P.7.& 44.P.& M.Dy.fo.144

Scot. And if a Scot be indicted of felony, he ſhall not haue his triall per medietatem linguæ, for that a Scot was neuer accounted an alien, but rather a ſubiect. Stat.1.& 2. P.& M.10. Dyer fol.304.

Challenge for want of ſufficient freehold.

4 There is another Challenge vpon cauſe, viz. for want of ſufficient freehold, which is a challenge of the polles, and this challenge was giuen by the Statute of 2.H.5. which doth ordaine, That no perſon ſhall be admitted to paſſe in anie Enqueſt vpon triall of the death of a man, or in anie Enqueſt betweene party and party in plea reall, or in plea perſonall, whereof the debt and dammages declared doe amount to forty markes aboue all charges, if the ſame perſon hath not Lands and Tenements of the yeerely value of forty ſhillings aboue all charges, ſo that hee bee challenged for that cauſe by the partie. And becauſe many marchants aliens, and other aliens, which neither had nor could purchaſe any land in this Realme, were greatly diſcontented with the foreſaid Statute of 2.H.5. and were ready to depart this Realme, for that the ſame Statute did take away, or was expounded to diminiſh the chiefe force of the before mentioned Statute of 28.E.3.13. and by that meanes to abridge aliens of their trials in moſt caſes per medietatem linguæ. Therefore, the more to encourage marchants to continue here, and alſo others to come with their marchandizes into this realme, by a ſtatute made Anno 8.H.6. it was declared, That the ſame ſtatute made Anno 2.H.5. ſhould be no wayes preiudiciall to the foreſaide firſt ſtatute made 28.Ed.3. nor was not meant that it ſhould extend to any, but onely to enqueſts to be taken betweene denizon and denizon, and not to the other enqueſts or prowes mentioned in the ſaid Statute of 28.Ed.3. viz. to enqueſts to be taken betweene denizons and aliens. And that the firſt ſtatute of 28.E.3. ſhould be effectuall, ſtand in force, and be put in execution, according to the forme thereof, notwithſtanding the later Statute of 2.H.5. and notwithſtanding that aliens haue not lands or tenements of the yeerely value of forty ſhillings, according to the purport of the ſaid later Statute of 2.H.5. And ſo by this ſtatute, want of ſufficient freehold is the cauſe of Challenge to Aliens which be impanelled with Engliſhmen. But yet it ſeemeth to be a cauſe to challenge Engliſhmen, who be impanelled with Aliens, for the perclose of this ſtatute doth wholly relie vpon Aliens. This laſt reherſed Statute of 8.H.6. willeth, That the intent of the other Statute of 2.H.5. ſhould be preferred before the words thereof, and ſo the Iudges of the Lawe haue expounded it, for they haue allowed a Iuror which had not forty ſhillings of freehold, to be ſworne in an Enqueſt, if others had ſo much land to his vſe. And where the words of the ſtatute be (if he hath not lands or tenements Stat.8.H.6.29 9.H.6.37.

of the yeerely value of fortie shillings) and doth not expresse in what countie, yet they do take it by intendment, that the lands must be in the county where
9.H.7.1. the issue is to be tried. And for that the words be in the present tense (viz. if he
M.12.H.7.4. hath not) they doe expound it, that the Juror must have so much land in the
H.32.H.6.20 same County at that time when he is sworne: for though he had so much land
P.21.H.6.39 when he was impanelled, yet if he hath alienated it, or that the same was evicted from him by an ancient title before the time he was sworne, the challenge of insufficiencie shal be allowed vnto the prisoner. And whereas the foresaid statute of 2.H.5. hath ordained (That no person shall be admitted to passe in any Enquest vpon the triall of the death of a man, if he hath not lands of the yeerely value of fortie shillings) this is not meant of the triall of the death of a man which is slaine, but of the triall of the death of a man which standeth at the barre vpon the question of his life or death. And then will this challenge serue for want of sufficient lands, vpon the triall of all manner of felonies and
St.33.H.8.12 treasons. By the statute of 33.H.8. it is enacted, That he which is arraigned of treason, murder, or manslaughter committed within the Verge, shall have no manner of challenge to any of the Jurie, malice onely excepted (and so shall have no challenge for want of sufficient freehold.) And in like sort it is ordai-
St.3.H.7.14 ned by the Statute of Anno 3.H.7. That he which being the kings seruant sworne, and whose name is in the checke Roll of the kings houshold, vnder the degree of a Lord, which is arraigned for conspiring with any other, to destroy any Lord of this realme, or any other sworne to the Kings Councell: Or the Steward, Treasurer, or Controller of the kings house, shall not have any challenge but for malice (and so shall have no challenge for want of sufficient
St.33.H.8.13 freehold.) By a statute made Anno 33.H.8. it was enacted, That if a Commission of Oyer and Determiner be directed into any County, for the triall of any person which doth confesse any murder to three of the kings Councell, or is vehemently suspected thereof, no challenge for the hundred or shire shall be allowed vnto him. But the challenge of any Juror for lacke of freehold, of the yeerely value of fortie shillings, shall be allowed, as hath beene accustomed. And because trialls in murders and felonies, in cities, boroughs, and townes corporat within this Realme, having authoritie in the deliuerance of such offendors, were oftentimes deferred and delayed, by reason of challenge made by such offendors, of Jurors, for lacke of sufficiencie of freehold, to the great
St.23.H.8.13 hinderance of iustice: for the redresse thereof, by a statute made Anno 23.H.8. it was enacted, That euery person, being the kings naturall subiect borne, which either by the name of a Citizen, or a Freeman, or any other name, doth enioy the liberties of any city, borough, or towne corporat, where he dwelleth, being worth in moueable goods to the cleare value of xl. pounds, shalbe admitted in triall of murders and felonies, in euery Sessions and Gaoles of deliuery kept in & for the liberty of such cities, boroughs, or towns corporat, albeit he hath no freehold. But this act extendeth not to any knight or esquire dwelling, abiding, or resorting to any such citie, borough, or towne corporat: Anie thing in the same Act to the contrarie hereof notwithstanding.

5 Vpon the arraignement of a prisoner, the king by his prerogatiue might haue challenged euery of the Jurors peremptorily by the common law, without shewing of any cause thereof, and by that challenge the same Juror should haue bin presently drawne. But this was a great mischiefe and offence to the subiect, who by that meanes was infinitely delayed, and had often put out of the Jury the most discreet and indifferent men, which were returned for his

triall: For the remedy whereof, by a Statute intituled Ordinatio de inquisitionibus, made Anno 33. Ed. 1. it was established, That touching Inquisitions to be made before any Justices, wherein the king is any way a partie, although it be alleadged by those which doe prosecute for the king, that the Jurors of those Inquisitions, or any of them, be not good for the king, those Inquisitions shall not therefore remaine to be taken: But if they which do pursue for the king, will challenge any of those Jurors, they shall shew a certaine cause of their challenge, and the truth of that challenge, whether it be true, or not, shalbe inquired of, according to the Justices discretion. But he that doth prosecute the suit for the king, need not presently shew the cause upon his challenge (as a common person should do, if hee were party against the king) for he may shew that cause when he hath perused the whole pannell. But if he that is arraigned, doe challenge any of the polles, he must shew the cause upon his challenge, which must be presently tried, for that it is in a plea of the crowne, wherein the king is a partie.

Challenge for the king.

Stat. 33. Ed. 1.

1. H. 5. 10. Fit. Chall. 105. 38. Ass. pla. 22.

An Outlaw of felonie.

6 A man outlawed of Felonie shall haue his challenges upon an Issue taken, for the avoidance of the felonie: for though he can not challenge a worse man than himselfe, being outlawed for felonie, yet seeing it is in Issue to trie, whether he be an Outlaw, or not, and by this triall, if it be found for him, to defeate the same Outlawrie, that opinion of him ought to be holden in suspence, vntill the said issue shall be tried against him.

Fit. Chall. 153 105.

A Juror, an alien, villaine, or outlaw.

7 It is a good Challenge upon cause, to say, that one of the Jurors is an Alien, or a Villaine, or an Outlaw; for then he is not Liber & legalis homo: for though an Alien borne hath dwelt in this realme from his childhood, and be sworne in a Leet, or other court, to the kings obedience, yet he is not the kings liege man: for the Steward of a Leet, nor any other, can make an Alien legalis homo, but only the king.

21. H. 6. 30. 14. H. 4. 19.

Eui-

Euidence.

1 WHen a priſoner is indicted of treaſon, or felonie, hath pleaded Not guiltie, is thereupon arraigned, and finiſhed his challenges, then euidence is to be giuen againſt him to prowue him guiltie, which euerie perſon ſhall be admitted to doe for the king. And becauſe the euidence of thoſe, that take the ſaid offendor with the maner, did firſt accuſe him, or brought him before the Juſtices of Peace to be examined of the ſuppoſed offence, hath beene alwayes adiudged moſt pregnant and effectuall: Therefore by a Statute made Anno 1. & 2. Ph. & Ma. it was ordained, That two Juſtices of peace at the leaſt, whereof one of them to be of the Quorum, when any priſoner is brought before them for any manſlaughter, or felonie, before any bailement or mainprize, ſhall take the examination of the ſaide priſoner, and information of them that bring him, of the fact, and circumſtances thereof, and the ſame, or as much thereof, as ſhall be materiall to prowue the felonie, ſhall put in writing, before they make the ſame bailement: which ſaid examination, together with the ſaid bailement, the ſaid Juſtices ſhall certifie at the next generall Gaole deliuerie to be holden within their Commiſſion: and that euerie Coroner, vpon any inquiſition before him found, whereby anie perſon or perſons ſhall be indicted for murder, or manſlaughter, or as acceſſorie or accellories to the ſame, before the murder or manſlaughter committed, ſhall put in writing the effect of the euidence giuen to the Jurie before him, being materiall. And as well the ſaid Juſtices, as the ſaid Coroner, ſhall haue authority by this Act to bind all ſuch by Recogniſance or Obligation, as doe declare any thing materiall to prowue the ſaid murder, or manſlaughter, offences, or felonies, or to be acceſſorie or accellories to the ſame, as is aforeſaid, to appeare at the next generall Gaole deliuery to be holden within the county, citie, or towne corporat, where the triall thereof ſhall be, then and there to giue euidence againſt the party ſo indicted at the time of his triall, and ſhall certifie aſwell the ſame euidence, as ſuch bond and bonds in writing as he ſhall take, together with the Inquiſition or Indictment before him taken and found, or before the time of his ſaide triall thereof to be had or made. And likewiſe the ſaid Juſtices ſhall certifie all and euerie ſuch bond taken before them, in like maner as is before ſaid of bailements and examination. And in caſe anie Juſtice of Peace, or Quorum, or Coroner, ſhall offend in anie thing contrarie to the true intent and meaning of this Act, then the Juſtices of Gaole deliuerie of the ſhire, city, towne, or place, where ſuch offences ſhall happen to be committed,

Stat. 1. & 2. Ph. & Ma. 13.

Euidence againſt an offendor let to baile.

committed, vpon due proofe thereof by examination before them, shall for euerie such offence set such fine on euery such Iustice of Peace, and Coroner, as the same Iustices of Gaole Deliuerie shall thinke meete, and shall estreat the same, as other fines and amerciaments assessed before Iustices of Gaole deliuerie ought to be. S. Mainprise 13.

2 Because the foresaid statute of 1. & 2. Ph. & Mar. 13. doth not extend to any such prisoners, as shall be brought before any Iustice of Peace, for Manslaughter or Felonie, and by such Iustice shall be committed to ward, for the suspition of such Manslaughter or Felonie, and not bailed: in which case the examination of such prisoner, and of such as shall bring him, is as necessarie, or rather more, then where such prisoner shal be let to baile: For the reformation whereof, by a statute made Anno 2. & 3. Ph. & Ma. it was enacted, That such Iustices or Iustice, before whom any person shall be brought, for Manslaughter or Felonie, or for suspition thereof, before he or they shall commit or send such prisoner to ward, shall take the examination of such prisoner, and information of those that bring him, of the fact and circumstances thereof, and the same, or as much thereof, as shall be materiall to prooue the felonie, shall put in writing within two daies after the said examination, and the same shal certifie in such maner and forme, and at such time, as they should and ought to doe, if such prisoner so committed or sent to ward, had beene bailed, or let to mainprise, vpon such paine as in the said former Act is limitted and appointed, for not taking or not certifying such examinations, as in the said former act is expressed. And the said Iustices shal haue authority by this act to bind al such by Recognisance or Obligation, as doe declare anie thing materiall, to proue the said Manslaughter, or Felonie, against such prisoner as shall be so committed to ward, to appeere at the next generall Gaole deliuerie, to be holden within the County, City, or Towne corporat, where the triall of the said Manslaughter or Felonie shall be, then and there to giue Euidence against the partie. And the saide Iustices shall certifie the saides bands taken before them, in like manner, as they should and ought to certifie the bands mentioned in the said former Act, vpon the paine, as in the said former Act is mentioned, for not certifying such bands as by the said former Act is limited and appointed to be certified.

Stat. 2. & 3. Ph. & M. 10.

Euidence against an offendor cõmitted to prison.

3 And for that men should be the readier and more willing to giue Euidence against Robbers and other Felons, by a Statute made Anno 21. H. 8. it was established, That if any felon or felons doe robbe or take away any mony, goods, or cattels from any of the kings subiects, from their person, or otherwise, within this realme, and thereof be indicted, and after be arraigned of the same felonie, and found guiltie thereof, or otherwise attainted by reason of Euidence giuen by the party so robbed, or owner of the said money, goods, or cattels, or by any other by their procurement, then the party so robbed, or owner, shall be restored to his said money, goods, and cattels. Before which Statute the partie robbed or owner of the goodes stolne could not haue had restitution, without suing of an Appeale against the Felon.

St. 21. H. 8. 11.

Restitution vpon attainder by euidẽce.

4 If the seruant be robbed, the master may giue euidence against the Felon, and haue restitution by this Statute, if so be, that the goods robbed were the goods of the master: for the words of the statute be (The party so robbed, or owner.) Also if he that was robbed doth not giue Euidence himselfe, but procure

Euidence giuen by a stranger.

cure another to giue the euidence, this is sufficient by the words of the statute, to obtaine restitution of his stolne goods.

St. 5, E. 6. 11. 5 By a Braunch of a statute made Añ 5. Ed. 6. it was ordained, That no person or persons shall be indicted, arraigned, conuicted, condemned, or attainted, for any Treasons that now be, or hereafter shalbe, vnlesse the same offendor or offendors be therof accused by two lawful accusors, which said accusors at the time of the arraignment of the party accused (if they be then liuing) shall be brought in person before the party so accused, and auow and maintain that which they haue to say against the said party, to proue him guilty of the Treasons or offences contained in the bill of indictment layed against the partie arraigned, vnlesse the said party arraigned shall willingly without violence confesse the same. But after by the statute of Añ 1. & 2. P. & M. it was ordained, That all trials to be had, awarded, or made for any Treason, shall be had and vsed onely according to the due order and course of the common lawes of this Realme, and not otherwise. Quære whether the said stat. of 1. & 2. P. & M. do take away the force of the foresaid stat. of 5. Ed. 6. which it is thought it doth not, but that the said statute of Anno 5. Ed. 6. doth remaine in force, seeing it was ordained onely for the accusation or euidence, and not for the time, place, or order of the triall.

There must be two accusors to giue euidence in Treason.

St. 1. & 2. P. & M. 10. T. 2. & 3. P. & M. Dyer 132.

1. M. Dyer 98. 6 If there be an Accusor of high Treason of his owne knowledge, or of his owne hearing, and he doth vtter it to an other, that other may well be an accusor or witnesse. And likewise if the second man do vtter it to the third, and the third to the fourth man, euery of them may be an Accusor or witnesse.

Euidence in high Treason

Stat. 5, El. 1. 7 By the statute of Anno 5. Eliz. it is ordained, That no person or persons shall be indicted for assisting, aiding, maintaining, comforting, or abetting of any person or persons, for any of the offences mentioned in the said statute, inortolling, setting forth, or defending of the vsurped power, and authority of the bishop of Rome, vnlesse he or they be thereof lawfully accused by such good and sufficient testimony or proofe, as by the Jury, by whom he shall be so indicted, shal be thought good, lawfull, and sufficient, to proue him or them guilty of the said offences. S. Treasons 15.

Euidence against abetors to offences.

Sta. 31. Eliz. 4. 8 By the Statute made Anno 31. Eliz. it is ordained, That such person and persons as shall be impeached for any offence made Felony by that Statute (being intituled, an Act against imbesilling of Armour, habiliments of warre, and victuals) shall by vertue of this act be receiued and admitted to make any lawfull proofe that he can, by lawfull witnesse, or otherwise, for his discharge and defence in that behalfe: any Law to the contrarie notwithstanding. See Felonies by Statute 33.

Euidence on the def. part.

Ver-

Verdict.

1 After the prisoner hath pleaded not guilty, hath bin thereupon arraigned, and euidence giuen against him in open court, before the Iudges and the Iury, the same Iury do depart from the barre to consider of their euidence & prooues, which being done, they returne again to the court to giue vp their verdict, which as the issue of not guilty is generall, so may they deliuer their verdict guilty, or not guilty, if they will, and that their euidence be cleare, and do induce them thereunto. But it is not alwaies requisit to giue a generall verdict: for if the fact, whereupon the prisoner was arraigned, be such, that the Iury doe stand in doubt, whether it be felony, or not, they shall best discharge their consciences to giue a speciall verdict, that is to say, a verdict at large, viz. a verdict, declaring at large the whole truth of the matter, which may be done aswell in case of felony, as in an Assise, or action of Trespas: as, they may deliuer their verdict, that the prisoner which is arraigned for the killing of a man, did slay the same man in his owne defence: for he that is arraigned must plead not guilty (seeing that in his plea he cannot iustifie the killing of a man) and then the Iury in their verdict may declare the whole circumstance of the fact, and conclude, that he killed him in his own defence: for it is not a sufficient verdict for the Iury to say, that the prisoner killed the man in his owne defence, but they must shew the cause, maner, and circumstance of the fact, that the Court may discerne & iudge, whether the fact which the prisoner hath committed, be felony, or not, whether the prisoner standeth in the Kings mercy, or not, and whether he shall lose his goods, or not.

A verdict at large in felonie.

44.E.3.44. Fitz. Cor. 289. 286.287. 47.Ass.p.31.

The verdict lesse penall then the indictment.

2 As a Iury may giue a speciall verdict, touching a man that killed an other in his owne defence, so may they giue a special verdict, where he that is arraigned killed an other by misfortune; or where he which committed the homicide, was not of perfect memorie, or deafe and dumbe, or an infant without discretion: or that the thing which was stolne was not worth aboue x. pence. Or that he which is indicted and arraigned for committing of a murther, did kill the man by chance medley, or in his owne defence, and not of malice prepenced. And if two be indicted for committing of a felonie, & do plead thereunto not guilty, the Iury may find, that one of them committed the felonie by the procurement of the other, but that he which was the procurer was not present at the committing of the felony.

T.26.H.8.5. P.9.El. Dyer 261. Pl.Com.101. Br. Cor. 221. Br Appeale 122.

3 And as a Iury may giue a speciall verdict to attenuate an offence, and to make

make it leſſe penall then is contained in the Indictment (as in the caſes aforeſaid) ſo may they by a ſpeciall verdict aggrauate the offence, more then the Indictment did. As, a man was indicted and arraigned for the ſtealing of linnen Cloth to the value of two ſhillings, whereunto the priſoner pleaded not guilty, and the Jury found that he did rob the owner of the linnen cloth, to the value of 5. ſhillings, and further, that hee toke it from the perſon of a man, whereupon hee was adiudged to be hanged. The verdict more penall then the Indictment.

Fitz Cor. 115.

4 When a man is indicted of the death of an other man before the Coroner, vpon the ſight of the body ſlaine, and after is acquite, the Jury which acquited him, muſt find one that killed him, or elſe the meanes whereby he came to his death: and if they find that I. N. killed him, this ſhall ſerue for an indictment againſt I. N. for it is certaine, that there is ſuch a perſon dead, ſeeing the Coroner did ſee him, and ſo recorded it, and therefore the maner of this perſons death muſt not ceaſe to be tried vntill it be found. But it is otherwiſe, where the priſoner is indicted before other Iuſtices, becauſe notwithſtanding ſuch an indictment, it may be there was no ſuch perſon dead: for the body was not ſeene by the Iuſtices, before whom that indictment paſſed, as in the other caſe it was by the Coroner: and therefore their record in that caſe, touching the death of a man, cãnot be of ſo great force as the Coroners is, vnles it be where the death of the man is notorious and generally knowne; then if he, which vpon an appeal or indictment of the death of that man is arraigned, & pleadeth not guilty, is by the Jury found not guilty, the Jury ſhall be charged to inquire who killed him: as, a man was indicted and arraigned for the killing of an other man, who thereunto pleaded not guilty, and the Jury found him not guilty: and becauſe the man was knowne to be killed in the preſence of many, the Iuſtices charged the Jury to inquire & find who killed him, and then they found, that the ſame man which was killed, was in a Tauerne, & drunken, and fell vpon his owne knife by miſchance, and ſo was the cauſe of his owne death. Where a Iuric ſhall find who killed the dead man.

14. H. 7. 2.
13. Ed. 4. 3.
22. Aſſ. p. 39.
7. Eliz. Dyer 238.

22. Ed. 3. 17.

37. Aſſ. p. 13.

Clergie.

Clergie.

What Clergie is.

1 CLergie is an auncient libertie of the holy Church, and it is when a Priest, or one within holy Orders, or any other in whom there is no impossibilitie to be a Priest, is arraigned of Felony before a secular Judge, he may pray to haue his Clergie, which was as much (before the statute of 18. Eliz.) as if he had prayed to be dismissed of the temporall Judge, and to be deliuered to the Ordinary to purge him of that offence: and now sithence that statute, it is as much as if he should pray (after the burning in the hand) to be inlarged, and deliuered out of prison. And it appeareth by the statute of Articuli Cleri, made Anno 9. Ed. 2. That a Clerke ought not to be iudged by a Temporall Judge, nor any thing may be done against him, that concerneth his life, or dismembring of him: And though this priuiledge had his beginning from the Cannon Law, and not from the common Law of this Realme, yet it hath bin confirmed by diuers Parliaments, and the temporall Judges haue so fauorably vsed it, that they haue graunted it to all that can read, although they be no Priests, nor within holy Orders, which is more then the Cannon Law requireth: for the Cannon Law expecteth no more then that it shall be graunted to Priests, and such as be within holy Orders. St. 18 Eliz. 6. St. 9. E. 2. 15.

Where no Clergie by the common Law

2 None of them in whom there is any impediment to be Priest, can by the common Law haue the priuiledge of clergie: as, he that is blind, or maimed, or one such as by no dispensation by the laws of the Church can be Priest, can haue the priuiledge of Clergie: Neither can any woman haue the priuiledge of Clergie. Fitz. Cor. 461

Committer of Sacriledge.

3 He that hath committed Sacriledge, shall not haue the priuiledge of clergy by the common Law, if the Ordinary do refuse him, & the secular Judge do assent to his refusall: and yet it is otherwise, if the Ordinary will claime him for a Clerke, and receiue him. But if one that hath committed Sacriledge be arraigned of an other felony then of that Sacriledge, for the which he doth pray his Clergie, and doth read well, and the Ordinary knowing that he hath committed Sacriledge, or some other grieuous crime, doth refuse him, the said offendor shall be hanged, though the Ordinary doth not shew the Iudges the cause of his refusall, S. Br. 24. Fitz. Cor. 120. 283 257. 26 Ass. p. 19. 27. Ass. p. 42. 21. Ed. 4. 21.

Habite or tonsure of a clerk.

4 If one that is a Priest, or within holy orders, hauing not the habite or tonsure of a clerke, do demaund his clergy, if the Ordinary do refuse him for it, Fitz. Cor. 233. 26. Ass. p. 19.

he

9.E.4.28. he shall be hanged: and so shall he be, if the Court do refuse him for that cause, though the Ordinary do not refuse him. S. Br. 5.

5 He that had his Clergie once, should haue had it againe by the common Law, and so, oft times: but by the stat. of 4.H.7. it was enacted, That euery person (not being within orders) which once hath been admitted to the benefit of his Clergie, being eftsoones arraigned of any such offence, shal not be admitted to the priuiledge of his clergie. And euery person so conuicted for murther, shall be marked with an M. vpon the brawne of the left thumbe: and if it be for any other felonie, he shall be marked with a T. in the same place of the thumbe; and those markes to be made by the Gaoler openly in the Court before the Judge, before the person be deliuered. And after by the stat. of 28.H.8. and 32. H.8. it was enacted, That such as be within holy orders shall be and stand vnder the same paines & dangers for their offences, and be vsed and ordered to all intents, as other persons not being within holy orders shall be.

4.H.7.13. 28.H.8.1. 32.H.8.3. Clergy allowed but once.

6 He that killeth a man in his owne defence, or by misaduenture, by the common Law shall not haue his clergie: Neither shall he who committeth petite Larceny haue his Clergie: and the reason is, for that in those cases he shall not haue iudgement of death.

Br.Cor.183. Killing a man by mischance, or in his owne defence. Petit larcenie

7 He which had offended in high Treason by the common law, should not haue had his clergie, neither he which had offended in petit Treason, vntill by the stat. of Añ 25.E.3. pro Clero it was enacted, That all Clerkes, as well secular as religious, which shal be from henceforth conuict before the secular Justices for any manner Treasons and Felonies touching other persons then the King himselfe, or his royall Maiesty, shall freely haue and enioy the priuiledge of holy Church, and shalbe without any impeachment or delay delinered to the Ordinaries demaunding them. It appeareth by the statute of Añ 4.H.4. That the Clergie promised to the King in Parliament, that a Clerke conuict for Treason touching the King himselfe, or for being a common theefe notoriously detected, and deliuered to the Ordinary, shall not make his purgation.

19 H.6 47. Fitz.Cor.283. 25.E.3.4. 4.H.4.3. Offendors in Treasons.

8 He that had confessed a felony, could not haue had his Clergy by the common Law, vntill the stat. of Añ 9.E.2. viz. Articuli Cleri, was made: Because after his confession he could not purge him of that offence, and therefore it was in vaine to haue him deliuered to the Ordinary, to be tryed of that offence. But the spirituall men at that time intended, that the same confession of a Clerke before a Temporall Judge was void, for that he could not be Judge of a Clerke: and therefore they obtained remedie by the said articles in two speciall cases, viz. Abiuration and approuement: and by the equity of the said statute, and in fauor of life, it is now permitted in all other cases of attainders.

9.E.2.16. Confession of felony.

9 By the statute of Añ 8. Eliz. it is enacted, That no person or persons which shal be indicted or appelled for felonious taking of any money, goods, or cattels from the person of any other priuily, without his knowledge, in any place whatsoeuer, and thereupon found guilty by verdict of vij. men, or shall confesse the same vpon his or their arraignment, or wil not answere directly to the same, according to the lawes of this Realme, or shall stand wilfully, or of malice,

8.El.4. Clergy taken away by seuerall statutes. A Cutpurse.

malice, or obſtinatly mute, or challenge peremptorily above the number of xx. or ſhall be vpon ſuch indictment or appeale outlawed, ſhall be admitted to haue the benefit of his or their clergy, but be excluded therof, and ſhall ſuffer death in ſuch manner & forme, as they ſhould if they were no clerks.

Forging of writings.

10 By the ſtat. of Añ 5. El. it is eſtabliſhed, That if any perſon or perſons being conuicted or condemned of any of the offences ſpecified in that Statute (prouided againſt the forging of euidences & writings) by any of the waies or meanes in the ſame ſtatute limitted, ſhall after any ſuch his or their conuiction or condemnation eftſones commit or perpetrate any of the ſaid offences, in the forme therein mentioned, that then euery ſuch ſecond offence or offences ſhalbe adiudged felony, & the parties thereof conuicted or attainted ſhall ſuffer death, loſſe, & forfeiture of their goods, cattels, lands, & tenemẽts, as in caſes of felony, without hauing any aduantage or benefit of Clergy or Sanctuarie. S. Forging &c. 8. and Felonies by Statute 27. St. 5. El. 14.

Buggery.

11 By the ſtatutes of Añ 25. H. 8. & Añ 5. El. it is enacted, That if any do commit Buggery with mankind or beaſt, the ſame offence ſhal be adiudged felony, and that no perſon offending in the ſame ſhalbe admitted to his clergy. S. Felonies by Statute 11. St. 25. H. 8. 6. St. 5. El. 17.

Egyptians.

12 By the ſtatute of Añ. 5. El. it is enacted, That euery perſon and perſons of the age of xiij. yeares, or aboue, calling himſelfe an Egyptian, or being in company with them, or counterfeiting or diſguiſing himſelfe by his apparell, ſpeech, or other behauior, like vnto the vagabonds, calling themſelues Egyptians, and ſo doth continue at one or ſeuerall times by the ſpace of a moneth, ſhalbe adiudged a felon, and ſhall loſe the priuiledge and benefit of Sanctuary and Clergy. S. Felonies by Statute 15. St. 5. Eliz. 20.

Relieuing of a Jeſuit or Prieſt.

13 By the ſtat. of Añ 27. El. it is enacted, That euery perſon which ſhall wittingly & willingly receiue, relieue, comfort, aid, or maintaine any Jeſuit, Seminary prieſt, or other Prieſt, Deacon, or religious or Eccleſiaſtical perſon whatſoeuer, being borne within this realme, or any the dominions therof, and heretofore (ſithence the feaſt of S. Iohn the Baptiſt Añ 1. Reg. El.) ordained, made, or profeſſed, or hereafter to be made, ordained, or profeſſed by any authoritie or iuriſdiction deriued from the Sea of Rome, being at liberty, or out of hold, knowing him to be a Jeſuit, Seminary prieſt, or ſuch other Prieſt, Deacon, or religious or Eccleſiaſtical perſon, as is aforeſaid, ſhal for ſuch offence be adiudged a felon without benefit of Clergy, and ſhal ſuffer death, loſe and forfeit as in caſe of one attainted of felony. S. Felonies by Statute 22. St. 27. Eliz. 2.

Rape. Burglary.

14 By the Statute of Anno 18. Eliz. it is ordained, That if any perſon or perſons ſhal fortune to commit or doe any manner of felonious Rape, Rauiſhment, or Burglary, or ſhall vnlawfully and carnally know and abuſe any woman child vnder the age of tenne yeares, and ſhall be thereof found guiltie by verdict, be outlawed, or confeſſe the ſame vpon his arraignment, he ſhall ſuffer paines of death, and forfeit as in caſes of felony, without any allowance or priuiledge of Clergy. St. 18. Eliz. 6.

Taking a woman againſt her will.

15 By the ſtatute of Añ 3. H. 7. it is enacted, That if any perſon or perſons ſhall take any maid, widow, or wife, which hath any lands or goods, or is heire appa- St. 3. H. 7. 2.

apparant to her auncestor against her will vnlawfully, such taking, procuring, and abetting to the same, and also receiuing wittingly the same woman so taken against her will, & knowing the same, shalbe felony: and such misdoers, takers and procurators to the same shalbe reputed & taken as principall Felons. But this act doth not extend to any person taking a woman, onely clayming her as his ward or bondwoman. And by the stat. of 39. El. it is ordained, That euery such person & persons as shal be conuicted or attainted of or for any offece made felony by the foresaid act of Añ 3. H. 7. or which shal be indicted & arraigned of or for any such offence, & stand mute, or make no direct answere, or challenge peremptorily aboue the number of xx. shal in euery such case lose his and their benefit of Clergy. Prouided alwaies, that this act shall not extend to take away the benefit of Clergy, but onely from such person and persons as hereafter shall be principals, or procurers, or accessaries before such offence committed. S. Felonies by Statute 5. Ward. Bondwoman

St. 39. El. 9.

16 By the statute of Añ 1. Iac. it is enacted, That if any person or persons shal vse, practise, or exercise any inuocation or coniuration of any euil & wicked spirit, or shall consult, couenant with, entertaine, employ, feede, or reward any euill & wicked spirit, to or for any intent or purpose, or take vp any dead man, woman, or child, out of his, her or their graue, or any other place where the dead body resteth, or the skin, bone, or any other part of any dead person, to be imployed or vsed in any maner of Witchcraft, Sorcerie, Charme, or Inchantment, or shall vse, practise, or exercise any Witchcraft, Inchantment, Charme, or Sorcerie, whereby any person shall be killed, destroyed, wasted, consumed, pined, or lamed in his or her body, or any part thereof: then euery such offendor or offendors, their aidors, abettors, and counsellors, being of any the said offences duly and lawfully conuicted and attainted, shall suffer paines of death as a felon, or felons, and shall lose the priuiledge and benefit of Clergy & Sanctuary: and if any person or persons shall take vpon him or them by Witchcraft, Inchantment, Charme, or Sorcery, to tell or declare in what place any treasure of gold or siluer should or might be found or had in the earth, or other secret places, or where goods lost or stolne should be found or become, or to the intent to prouoke any person to vnlawfull loue, or whereby any goods or cattels of any person shall be destroyed, wasted, or impaired, or to hurt or destroy any person in his or her body, although the same be not effected and done: and being once conuicted of the same offences, as is aforesaid, do eftsones perpetrate and commit the like offence, then euery such offendor being of any the said offences the second time lawfully and duly conuicted and attainted, shall suffer paines of death as a felon, and shall lose the benefit and priuiledge of clergy and sanctuary. S. Felonies by Stat. 29. Coniuration, witchcraft. Telling where things lost may be found. Prouoking to loue. Destroying of men or cattell.

St. 1 Iac. 12.

17 By the statute of Anno 1. Iac. it is enacted, That if any person or persons shall stabbe or thrust any person or persons that hath not then any weapon drawne, or that hath not then first stricken the party which shall so stabbe or thrust, so as the person or persons so stabbed or thrust, shall thereof die within the space of fiue moneths then next following, although it cannot be proued that the same was done of malice forethought: yet the party so offending, and being thereof conuict by verdict of twelue men, confession, or otherwise according to the Lawes of this Realme, shalbe excluded from the benefit of his or their Clergy, and shall suffer death as in case of wilfull murther. S. Homicide 24. Stabbing or thrusting.

S. Murther 24.

A Recusant not abiuring, or returning.

18 If any such offendor, which by the tenor and effect of the act made Añ 35. Eliz. (intituled an act to retaine the Quenes Subiects in due obedience) is to bee abiured the Realme, shall refuse to make such abiuration, as by that statute is appointed: Or after such abiuration shall not goe to such hauen, and within such time as is appointed, and from thence depart the Realme, according to the said statute: Or after his departure shall returne againe into any of the kings Realmes or Dominions, without his speciall licence in that behalfe first had and obtained: then in euery such case the person so offending shall be adiudged a felon, and suffer as in case of felony, without benefit of clergy. S. Felonies by Statute 9. 5. 35. Eliz. 2.

Abiuration of a Popish Recusant.

19 If any such offendor, which by the tenor and intent of the act made Añ 35. Eliz. (intituled an act for the restraining of Popish recusants to some place of abode) is to be abiured the Realme, shall refuse to make such abiuration: Or after such abiuration made shall not goe to such hauen, and within such time as is appointed, and from thence depart out of this Realme according to the said act: Or after such departure shall returne and come againe into any of the kings Dominions, without his speciall licence in that behalfe first obtained and had: then in euery such case the person so offending shall be adiudged a felon, and lose as in case of felony, without benefit of Clergy. S. Felonies by Statute 11. 5. 35. Eliz. 2.

A Souldier departing from his captaine.

20 By the statute of Añ 18. H. 6. it is enacted, That if any souldier, man of Armes, or Archer, which hath taken parcell of his wages of his Captaine and is entred of record the kings souldier (except notorious sicknes or impediment by Gods visitation doth let, which he shal immediately certifie his captain, and repay his mony) or else being in the enemies country in garrison, or els where, in the kings seruice, where he is appointed to serue, doth depart without licence of the kings lieutenant, deputie, high admiral, vicеadmiral, captain, or in their absence of their deputies, he shalbe taken, iudged, and executed as a felon. And by the Statute of Anno 2. & 3. Ed. 6. he shall not haue aduantage of his Clergie or sanctuarie. S. Felonie by Statute 21. 5. 18. H 6. 19

5. 2. & 3. Ed. 6. 2.

Wandering souldiers and mariners.

21 By the stat. of Añ 39. El. it is ordained, That if any idle and wandring Souldier or Mariner doe not settle himselfe to labour, seruice, or other lawfull course of life, without wandring; or otherwise repaire to the places where he was born, or to his dwelling place, & there remaine, betaking himselfe to some lawfull trade or course of life: Or comming from his Captaine, shall not haue a testimoniall of a Iustice of peace &c. or shall counterfeit or forge such testimoniall, or haue with him any such testimoniall forged, knowing the same to be forged, being retained into seruice, or shall depart within the yeare without the licence of him that retained him into seruice, then he shal be iudged as a felon without the benefit of clergy. S. Felonies by Statute 3. 5. 39. El. 17.

Taking away any person against his will in Cumberland &c.

22 By the Stat. of Añ 43. El. it is established, That whosoeuer shall without lawfull authority take any of the kings subiects, against his or their wills, and carry him or them out of the counties of Cumberland, Northumberland, Westmerland, or the Bishoprick of Durham, or to any other place within any of the said counties, or detayne, force, or imprison him or them as prisoners, or against his or their wills to raunsome them, or to make a pray or spoile of his or their person or goods vpon deadly feude, or otherwise, shal be taken to be felons, 5. 43. El. 13.

lons, and ſuffer death without benefit of Clergy, Sanctuary, or Abiuration, &c. S. Felonies by Statute 36.

St. 1. E. 6. 12. 23 By the ſtat. of Anno 1. Ed. 6. it is ordained, That no perſon or perſons that heretofore hath bin, or that at any time hereafter ſhalbe in due forme of the law attainted or conuicted of murther of malice prepenced, or of poyſoning of malice prepenced, or of breaking of any houſe by day or by night, any perſon being then in the ſame houſe, where the ſaid breaking hath bin, or ſhal be committed, heretofore hath bin, or hereafter ſhalbe thereby put in feare or dread, or of, or for robbing of any perſon or perſons in the high way, or nere to the high way, or for felonious ſtealing of Horſes, Geldings, or Mares, or of felonious taking of any goods out of any pariſh church, or chappel, or being indicted or appealed of any of the ſame offences, & thereupon found guiltie by verdict of xij. men, or ſhall confeſſe the ſame vpon his or their arraignment, or will not aunſwere directly according to the lawes of this realme, or ſhall ſtand wilfully or of malice mute, ſhall not be admitted to haue or enioy the priuiledge or benefit of his Clergy or Sanctuary, but ſhalbe put from the ſame. And that in all other caſes of Felony (other then ſuch as are before mentioned) all and ſingular perſon and perſons which ſhall be arraigned, or found guilty vpon his or their arraignment, or ſhall confeſſe the ſame, or ſtand mute in forme aforeſaid, or will not anſwere directly in forme aforeſaid, ſhal haue and enioy the priuiledge and benefit of his or their Clergy and Sanctuary, in like maner and forme as he or they ſhould or might haue done before the 24. of Aprill, Añ 1. H. 8.

Murther. Poyſoning. Burglary. Robbery in the high way. Stealing of horſes. Sacrilege. Clergy allowed in all other felonies.

24 Becauſe it was doubtfull by the words mentioned in the foreſaid act of 1. Ed. 6. 12. whether that any perſon being in due forme of Law found guiltie, or otherwiſe attainted or conuicted for felonious ſtealing of one Horſe, Gelding, or Mare, ought to be admitted to haue and enioy the priuiledge & benefit of his Clergy or Sanctuary: Therefore by a ſtat. made Añ 2. & 3. Ed. 6. it is declared and enacted, That all and ſingular perſon and perſons feloniouſly taking or ſtealing any Horſe, Geloing, or Mare, ſhall not be admitted to haue or enioy the priuiledge or benefit of his or their Clergy or Sanctuary, but ſhalbe put from the ſame, in like manner and forme, as though he or they had bēn indicted or appealed for felonious ſtealing of two Horſes, two Geldings, or two Mares of any others, and thereupon found guilty by verdict of twelue men, or cōfeſſed the ſame vpon their arraignment, or ſtand wilfully or of malice mute.

St. 2 & 3. Ed. 6. 33. Stealing one Horſe.

P. 1. M. Dy. 99 See St. 31. El. 12. to the contrarie. But he that is accellary to the ſtealing of Horſes or Mares, ſhal haue the benefit of his Clergy, for that the foreſaid ſtatutes ſhalbe taken ſtrictly, which maketh mention expreſſely but of the principall. Accellaries to ſtealing of Horſes.

St. 5. & 6. Ed. 6. 10. St. 25. H. 8. 3. Sta. 23. H. 8. 1 25 By a ſtatute made Añ 5. & 6. Ed. 6. it was rehearſed & ordained, That where in the parliament holden at Weſtminſter 15. die Ianuarij Añ 25. H. 8. it is recited, That at the parliament holden at Weſt. Añ 23. H. 8. amongſt other things it was ordained, That no perſon or perſon, which after that time ſhould happen to be found guilty after the lawes of this land of any manner of petit Treaſon, or for any wilfull murther of malice prepenced, or for robbing of any Churches, Chappels, or other holy places, or for robbing of any perſon or perſons in their dwelling houſes, or dwelling places, the owner or dweller in the ſame houſe, his wife, children, or ſeruants then being within, and put in feare and dread by the ſame: Or for robbing of any perſon or perſons in or nere about the high way: or for wilfull burning of any dwelling houſes, or

barnes, wherein any graine or corne should happen to be: nor any person or person being found guilty of any abetment, or procurement, helping, maintaining, or concealing of or to any such petit Treason, Murthers, or Felonies, should not from thencefoorth be admitted to the benefit of his or their Clergie, but should be vtterly excluded therof, and suffer death, in such manner & form, as they should haue done for any the causes or offences aboue said, if they were not Clerkes. Which act extended but only where such offendor was conuicted in such County or place, where such offence was so committed and done, and not where he or they did such offence in one County, and were taken with the manoure in another County. Wherefore it was considered, That for as much as diuers and many Felons & Robbers, that commit & doe diuers and many great heinous robberies & burglaries in one shire, & conuey the spoile and robbery into any other shire, and there be taken, indicted, & arraigned of felonie, for the felonious stealing of the same goods, in the same other shire than where the same Robberies or Burglaries where done and committed, and not of the same Robberie nor Burglarie, for that it was not done nor committed in the same Shire where they bee so indicted and arraigned, and that by reason thereof such felons, robbers, and burglarers, had and enioyed the priuiledge and aduantage of their Clergie: for redresse whereof it was enacted in the same Parliament holden in the said fine and twentieth yeare of the said late King, That if any person or persons, after that time, after such robberie or burglarie by him or them done in one Countie, should be indicted of Felonie for stealing of any goods or cattels in any other Countie within this Realme, and thereupon arraigned, and found guiltie, or stand mute of malice, or challenge peremptorily aboue the number of twentie persons, or would not vpon his or their arraignement directly answere to the same felonie, that then the same person and persons so arraigned, and found guiltie, or standing mute of malice, or challenging peremptorily aboue the number of twentie persons, or that would not directly aunswere to the law, should lose and be put from the benefit of his or their Clergie, in like manner and forme as they should haue beene, if they had beene indicted, arraigned, and found guiltie in the same Countie where such robberie or burglarie, as is aforesaid was done or committed, if it should appeare to the Iustices before whom any such felons or robbers should be arraigned by euidence giuen before them, or by examination, that the same felons or burglarers should haue bin put from their Clergie, in case they had beene indicted, arraigned, and found guiltie in the same countie where the same robberies or burglaries were committed or done, as in the same statute made in the said fine and twentith yere, among other things more plainely appeareth. And where in the Parliament holden at Westminster, the fourth day of November, in the first yeare of the raigne of our Soueraign lord the King that now is, it is ordained and enacted, amongst other things, That no person or persons that before that time had beene, or at any time hereafter should be in due forme of law attainted or conuicted of murder of malice prepensed, or of poysoning of malice prepensed, or of breaking of any house by day, or by night, any person beeing then in the same house when the same breaking had bin, or after that time should be committed, beeing put in feare or dread, or of or for robbing of any person or persons in the high way, or nere the high way, or for felonious stealing of Horses, Geldings, or Mares, or of felonious taking of any goods out of any Parish Church, or other Church or Chappell, or being indicted or appealed of any of the same offences, and thereupon found guiltie by verdict of twelue men, or should confesse 1. Ed. 6. 12.

ſelfe the ſame vpon his or their arraignement, or would not anſwere directly according to the lawes of this Realme, or ſhould ſtand wilfully or of malice mute, ſhould not be admitted to haue or enioy the priuiledge or benefit of his or their Clergie or Sanctuarie, but ſhould be put from the ſame. And that in all other caſes of Felonie (other than ſuch as be before mentioned) all and ſingular perſon and perſons, which after the firſt day of March then next following, ſhould be arraigned or found guiltie vpon his or their arraignement, or ſhould confeſſe the ſame, or ſtand mute in forme aforeſaid, or would not anſwere directly in forme aboueſaid, ſhould haue and enioy the priuiledge and benefit of his or their Clergie, and the libertie and priuiledge of Sanctuarie, in like manner and forme, as hee or they might or ſhould haue done before the foure and twentieth day of Aprill, in the firſt yeare of the raigne of the ſaid late K. Henrie the eight, as in the ſaid act made in the ſaid firſt yeare, among other things more plainely appeareth. By reaſon of which article and clauſe, contained in the ſaid act made in the ſaid firſt yeare, the ſaid Statute made in the ſaid fiue and twentieth yeare of the ſaid late King, which did put ſuch felons and burglarers from their Clergie, that doe ſuch offence in one Countie, and after are taken with the goods ſtollen in an other Countie, and there indicted, arraigned and found guiltie, was made voide: By reaſon whereof diuers and many perſons that ſithence the ſaid firſt yeare, haue committed ſuch Robberies and Burglaries in one Countie, and after haue been taken with the manner in an other Countie, and there indicted, arraigned, and found guiltie, haue had and enioyed their Clergie, which they could not haue had, in caſe the ſaid act made in the ſaid fiue and twentieth yeare had ſtood in force, to the great

St. 5. & 6. Ed. 6. 10. boldening and comfort of ſuch offendors: Be it enacted, That the ſaid act made in the ſaid fiue and twentieth yeare, touching the putting of ſuch offendors from their Clergie, and euerie article, clauſe, and ſentence contained in the ſame, touching Clergie, ſhall from henceforth touching ſuch offences to bee committed and done, ſtand, remaine, and be in full ſtrength and vertue, in ſuch manner and forme, as it did before the making of the ſaid act made in the ſaid firſt yeare of the raigne of our ſaid Soueraigne Lord that now is, any clauſe, article, or ſentence comprized in the ſaid act made in the ſaid firſt yeare, to the contrarie thereof notwithſtanding. This Statute of 5. & 6. Edw. 6. doth not reuiue the whole before rehearſed Statute of 25. H. 8. (being before repealed by the laſt braunch of the before ſpecified Statute of 1. Edw. 6. 12.) but reuiueth onely ſo much thereof, as concerneth the ſtealing of goods in one Countie, and after carrying them into another Countie, as it appeareth by the words of the ſame Statute. And neyther the ſayd Statute of 25. H. 8. nor this Statute of 5. & 6. E. 6. doe extend to Appeales, but onely to Indictments: ſo that in an Appeale brought in the Countie whither the goods robbed or ſpoyled were carryed, if the defendaunt bee conuict thereof, the defendaunt may haue his Clergie at this day.

Stealing of goods in one County, and carrying them into an other.

St. 5. & 6. Ed. 6. 9. St. 23. H. 8. 1. 26 By a Statute made Añ 5 & 6. Ed. 6. it was rehearſed and eſtabliſhed, That whereas at the Parliament holden at Weſtminſter by prorogation Añ 23. H. 8. it was then and there among other things ordained, That no perſon or perſons, which after that time ſhould happen to be found guiltie after the lawes of this Realme, for any manner petit Treaſon, or for any wilfull murder of malice prepenſed, or for robbing of any Churches, Chappels, or other holy places, or for robbing any perſon or perſons in their dwelling houſes,

or dwelling places, the owner or dweller in the same house, his wife, his childzen, or seruants then being within, and put in feare or dread by the same, or for robbing of any person or persons in or neere about the highwayes, or for wilfull burning of any dwelling houses, or barnes, wherein any graine or corne shall happen to be: nor any person or persons being found guiltie of any abetment, procurement, maintaining, or concealing of any, or to any such Petit treasons, murders, or felonies, should from thencefoorth be admitted to the benefit of his or their Clergy, but vtterly to be excluded therof, & suffer death in such maner and forme as they should haue done, for any the causes or offences aboue said, if they were no Clerkes (such as be within the holy orders (that is to say) of the orders of Subdeacon, or aboue, all only excepted, as by the same act among other things more plainely appeareth) the which act was made to endure vntill the last day of the next parliament, and after that at the Session of the parliament holden at Westminster by prorogation in the 32. yeare of the raigne of the said late king, the same act with other acts was made to continue for euer. Sithence the making of which statute it hath bin doubted, that if such robberies and felonies haue bin committed and done in dwelling houses and dwelling places, the owner or dweller in the same house, his wife, his childzen, or seruants, being then put in feare or dread by the same, shal not lose the benefit of their clergy, if the offendors be therein found guilty by the laws of this Realme, vnlesse the same robbery or felonie be committed and done in the verie chamber, house, or place, where the owner or dweller in the same house, his wife, childzen, or seruants shall happen to be, or lye at the time of such robbery and felonie committed and done, and put in feare and dread, although the owner or dweller in such house and houses, his wife, his childzen, or seruants at the time of such robberie and felonie committed and done, were or lay in other places within the precinct of the same dwelling houses, nigh vnto the house or place where such robberie and felonie shall happen to be done: Or if it happen that the owner or dweller within the same house where such robberie and felonie shall happen to be done, his wife, childzen, or seruants to be asleepe at the time of such robberie and felonie committed and done, although the same robbery were done in the chamber or place where the owner or dweller in the same house, his wife, childzen, or seruants, then lay, the offendors being found guilty thereof, according to the lawes of the land, should not lose the benefit and aduantage of his clergie. And where also it hath bin in question, and doubted, that if such robberies and felonies happen to be committed and done in any bath or bathes, tent, or tents, in any faire or market, the owner of the same, his wife, childzen, or seruants happening to be within the same at the time of the committing of such felonies, and put in feare and dread, the offendors therein being found guiltie, after the Lawes of this realme, should not lose the benefit of their Clergy. For the true declaration & exsplanation of the same doubts or questions before recited, be it enacted, That if it happen any person or persons to be found guilty according to the Lawes of this Realme, for robbing of any person or persons in any part or parcell of their dwelling houses or dwelling places, the owner or dweller in the same house, or his wife, his childzen, or seruants, being then within the same house or place, where it shal happen the same robbery & felony to be cõmitted & done, or in any other place within the precinct of the same house, or dwelling place, that such offendors in no wise shalbe admitted to their clergy whether the owner or dweller in the same house, his wife, or childzen, then & there being, shall be waking or sleeping. And that no person nor persons which shal happen to be found

Robbing of houses.

St. 32. H. 8. 3.

St. 23. & 24. E. 6. 7.

found guiltie after the Lawes of this Realme, of, and for robbing any person or persons in any bath or tent in any faire, or market, the owner, his wife, his children, or servants or servant, then being within the same bath or tent, shall not from henceforth be admitted to the benefit of his or their clergie, but vtterly be excluded thereof, and suffer death in such manner and forme as is before mentioned in the saide Act, made in the saide 32. yeare of the raigne of the same late king for robberies and felonies committed and done in dwelling houses and dwelling places, the owner or dweller in the same, his wife, children or servants then being within the same, and put in feare & dread, without having any respect or consideration, whether the owner or dweller in such bathes and tents, his wife, children, or servants being in the same bathes or tents, at the time of such robberies and felonies committed, shall be sleeping or waking. This Statute mentioneth onely where one is found guiltie after the Lawes of this Realme: and therefore it is to be considered, if the offendor doe confesse the felonie, or stand mute, or challenge peremptorily aboue twentie persons, or will not answer directly to the felonie, whether he shall haue his clergie or not, because he is out of the words of this Statute. Also this Statute doth not take away the benefit of clergie from the offendor, but where the owner, his wife, children, or servants were within the house at the time of the offence committed: for if none of them but a stranger did lie within the house by the licence of the owner, at the time of the offence committed, then is the offendor out of the danger of this Statute. And so he that is attainted by outlawrie, or by battell, is out of the cases of all the foresaide Statutes which doe take away Clergie. One was indicted, for that he did feloniously take fortie shillings in money numbred, from the person of I. S. and he had his Clergie in this case, for that it was not robberie, because it was not found by the indictment, that the person of I. S. was put in feare by assault and violence.

Robbing of bathes or tents.

Attainder by outlawrie or by battell.

5. El. Dier 224

27 Because diuers lewd persons, vnderstanding that the penaltie of robbing of houses in the day time (no person being in the house at the time of the robberie) is not so penall, as to doe a robberie in any house, any person being therein at the time of the robberie, which hath and doth imbolden seuerall lewd persons to watch their opportunity and time to commit and do many hainous robberies, in breaking and entring diuers honest persons houses, and specially of the poorer sort of people, who by reason of their pouertie are not able to keepe any seruant, or otherwise to leaue any body to looke to their house when they goe abroad to heare diuine seruice, or to follow their worke to get their liuing: For the preuention whereof, by a Statute made Anno 39. Eliza. it was enacted, That if any person or persons shall be found guilty, and conuicted by verdict, confession, or otherwise, according to the Lawes of this Realme, for the felonious taking away in the day time, of any mony, goods, or cattell, being of the value of fiue shillings or vpward, in any dwelling house, or houses, or any part thereof, or any outhouse, or outhouses, belonging and vsed to and with any dwelling house or houses, although no person shall be in the saide house or outhouses, at the time of such felony committed: then such person and persons shall not be admitted to the benefit of his or their Clergie, but shall be vtterly excluded thereof.

Stat. 39. El. 15

Robbing a house in the day time.

28 By the Statute made Anno 4. & 5. Ph. & Mar. it was enacted, That all and euerie person and persons that shall malitiously commaund, hire, or counsell

Stat. 4. & 5. Ph. & Mar. 4.

Commaundement or counsell of felonies.

counſell anie perſon or perſons to commit or done anie petit Treaſon, wilfull murder, or to do anie robbery in anie dwelling houſe or houſes, or to do or commit any robberie in or neere any highway in the realme of England, or in any other the Queenes dominions: or to commit or doe any robberie in anie place within the Marches of England againſt Scotland: or wilfully to burne anie dwelling houſe, or any part thereof: or any barne then hauing corne or graine in the ſame: then euery ſuch offendor and offendors, and euery of them, being outlawed of the ſame, or being thereof arraigned and found guiltie by the order of the law, or being otherwiſe lawfully attainted or conuicted of the ſame offence, or being arraigned thereof, do ſtand mute of malice or froward mind, or do challenge peremptorily aboue the number of twenty perſons, or will not anſwer directly to ſuch offence, ſhall not haue the benefit of his or their clergie. Euerie Lord and Peere of the realme hauing place and voice in Parliament, vpon euerie indictment for anie of the offences aforeſaid, ſhall be tried by his Peeres. A man was indicted of the robberie of another in his manſion houſe, he being in his houſe, and put in feare: And another was indicted, for that hee did felonioufly before the ſaide robberie procure and counſell the principall to commit the ſaid robberie: in which indictment of the acceſſorie, this word (malitiouſly) was omitted: for the default of which word, this acceſſorie had his clergie, for this word (malitiouſly) ſhall haue relation to all the aforeſaide offences of petit treaſon, murder, robberie, and burning of houſes.

P. 2. Eliz. Dier 183.

Maliciouſly omitted in the indictment.

Where a Lord of the Parliament ſhal haue the benefit of his Clergie.

28 By the before ſpecified Statute of Anno 1. Ed. 6. among other things it is enacted, That in all and euery caſe and caſes, where any of the kings ſubiects ſhall and may vpon his praier, haue the priuiledge of Clergie, as a clerke conuict that may make purgation, in all thoſe caſes, and euerie of them, and alſo in all and euerie caſe and caſes of felonie, wherein the priuiledge or benefite of Clergie is reſtrained, excepted, or taken away by this Statute (wilfull murder and poiſoning of malice prepenced only excepted) the Lord and Lords of the Parliament, and Peere and Peers of the realme hauing place and voice in Parliament, ſhall by vertue of this Act, of common grace, vpon his or their requeſts and praier, alledging that he is a Lord or Peere of this Realme, claiming the benefit of this Act, though he cannot reade, without burning in the hand, loſſe of inheritance, or corruption of his bloud, be adiudged, deemed, taken, and vſed, for the firſt time onely, to all conſtructions, intents, and purpoſes, as a Clerke conuict, which may make purgation, without anie further or other benefite of Clergie, to any ſuch Lord or Peere from thenceforth, at any time after, for any cauſe to be allowed, adiudged, or admitted: Anie lawe, cuſtome, ſtatute, or other thing to the contrary notwithſtanding. By this Statute a Lord of the Parliament ſhall haue the priuiledge of his Clergie, where a common perſon ſhall not, viz. for the breaking of a houſe by day or night, or for robbing of any in the highway, and in all other caſes excepted in the ſaide ſtatute of Anno 1. Ed. 6. ſauing in wilfull murder and poiſoning. But in all other caſes wherein Clergie is taken away by anie Statute made ſithence the ſaid ſtatute of Anno 1. Ed. 6. he is in the ſame degree that a common and inferiour perſon is. But the Court will not giue him the benefit of this Statute, if he doth not require it. If a Lord of the parliament doth confeſſe his offence vpon his arraignement, or doth abiure, or is outlawed for felony, it ſeemeth that in theſe caſes he may haue the benefit of this ſtatute, viz. his Clergie, for that by the ſtatute of 18. Eliz. 6. he nor any other neede to make his purgation, but ſhalbe forthwith deliuered out of priſon by the Iuſtices: ſed quære.

Stat. 1. E. 6. 12

S. R. 24.

30 In all the foresaid cases of wilfull murder, breaking of houses, robbing in or neere the high way, buggery, stabbing, and such like, where a man is put out of his Clergie by Statute, it is necessary, that in the indictment mention should be made of the offence, in such maner as the same offence is expressed in the Statute, or otherwise the offendor shall haue his Clergie: for if the indictment be onely murdrauit, without adding ex malitia præcogitata, the partie meant to be indicted of wilfull murder, shall haue his Clergie; and so of all the residue: for his attainder or conuiction is vpon the matter contained in the appeale or indictment: and if in the appeale or indictment no matter is contained which doth put him out of his Clergie, then it cannot be said that he is attaint or conuict of any matter contained in the Statute, which should cause him to lose the benefit thereof. And the Judge is to haue speciall regard and consideration, when those words be put into the indictment, that they which do giue euidence do proue the same words well and substantially, as well as the principall fact: and if they doe not, the Judge is to admonish the Jurie thereof, viz. that there is no proofe of those words by the euidence, and that therefore they are not bound to finde them, if they doe not know them of their owne knowledge. Or otherwise for default of good examination, the life and lands of anie man may be lost by the malice of an other which will put false words in an indictment, that cannot be proued by euidence.

The indictment must be according to the statute.

P. 9. Eliz. Dier 261.

The words of the indictment to be proued.

31 By the auntient law of the Realme, if a Clerke of any order or dignity had beene taken for the death of a man, or other felony or offence, and imprisoned, and the Ordinary had demanded him, the temporal Judge ought to haue deliuered him presently to the Ordinary, his Officiall, or to some other by his warrant, without inquiring of him, viz. before his indictment: Not to the intent that the Ordinarie should set him at libertie, but keepe him in prison vntill the offendor were purged of his crime: for it was then holden for law, that the king could not keepe him in prison, whom he could not iudge, neither could he disgrade any of his Clergie, because he could not admit any to his Clergie. But because the Statute of Westminst. 1. doth ordaine, That they which bee indicted of felony in the Kings Court, by the solemne oath of lawfull witnesses, shall be deliuered to the Ordinarie vpon his request, according to the priuiledge of holy Church, but yet in no maner without due purgation: therefore they that came after this statute, changed the said antient law, for they would not deliuer the prisoner vnto the Ordinary, vntill he was indicted, and also arraigned, and that it was enquired by an Enquest of Office, whether hee were guilty or not. In which case, if he were found not guilty, they would discharge him: and if he were found guilty, his goods should be forfeited, his lands taken into the kings hands, and his body deliuered to the Ordinarie. And the cause of chaunging this Lawe was, that the Ordinarie might take greater charge of the prisoner, being now indicted, than before, and to benefit the King by the forfeiture of the prisoners goodes, and to breede a greater feare in Clerkes after, that they should not offend. Which alteration was obserued for Law, vntill the raigne of king Henry the first, at which time the Iudges would not admit a prisoner to demaund his clergie vpon his arraignement, but put himselfe first to answer to the felonie, and if he were found guiltie of the felonie, at his owne suit, then to heare him demaund his Clergie, and not before: which is a more reasonable law than the former: for before hee should haue forfeited his goods vpon an Enquest of Office, whereunto he could haue no challenge: and now he shall be tried at his owne suit, and shall haue his challenge to the Enquest;

When clergie shall be demaunded.

Bracton.

Stat. W. 3. E. 1

Fit. cor. 233. 386. 417. M. 40. E. 3. 42

3. H. 7. 1. & 12

Enquest: and then if he be found guiltie, he shall forfeit his goods: and for the saving of his life and his lands, he is to pray his clergie. Which hath bin vsed euer sithence, and is obserued for law at this time, vnlesse the prisoner himselfe will refuse the benefit thereof, and pray to haue his booke, without hearing the verdict: As if a prisoner after an enquest is charged vpon him, and before their returne againe, will say that he is a clerke, and desire his booke at his perill: in this case the Court hath allowed him his Clergie, and yet after hath receiued a verdict, as well in fauour of life, as in fauour of the king, for if he be found not guilty, the prisoner shalbe discharged, and if he be found guiltie, the king shall haue his goods as forfeit: And the request of his booke in that case, is more for the prisoners disaduantage than the kings, for it may be a meane that the Iurie vnderstanding thereof, will the rather find him guiltie of the felonie, than otherwise they would haue done.

Clergie demanded before verdict.

Denying to be a Clerke, and yet is.

32 If a prisoner doe say, that hee is no Clerke, yet after, if before iudgement he do pray his clergie (where Clergie is allowable by the Law) and then doth reade as a Clerke, he shall haue his Clergie, notwithstanding his former words. But it hath beene a question, whether the Iudges ought to allow any man his Clergie without praying of it, though the offendor be indicted by the name of Priest, Clerke, &c. or that by some other meanes the Iudges themselues do know that he is a Clerke, or that without praying of his clergie they shall giue iudgement of death against him. And in this case some do affirme, that if the prisoner doth not pray his clergie, he shall not haue it, though the Iudge doth vpon his owne priuat knowledge vnderstand that he is a Clerke: for the Iudge must in those cases proceed according to his iudicial knowledge, and as by record things be found, prooued, and tried before him, and not according to his owne naturall knowledge, And they be the rather so induced to think by the words of the aforesaid stat. of 1. E. 6. which ordained, That a peere of the realme shall (vpon request) haue the benefit of his clergie, and so inferre, that without request he shal not haue it, nor any other without request which is to haue it vpon request.

16. Ass. pla. 19

whether clergie is allowable without request.

Fitz. cor. 254

Stat. 1. E. 6. 12

who shall allow of clergie.

33 The temporall court shalbe Iudge to allow or disallow of Clergie, and not the Ordinary: for it was entred into the roll of the Court, legit vt clericus, ideo tradatur Ordinario, by which words it doth appeare, that the Court doth giue allowance thereof: for the felony being the act which is committed is temporall, & Iudge which did commit him to the Ordinary is temporall, and so is the authority whereby he did commit him. And the Ordinary should haue bin punished if before the stat. of 18. Eli. he had letten to baile or at liberty any prisoner committed to him, or if he had imprisoned him too straitly, or too easily, or would not haue suffred him to haue made his purgation: & in that case the king might haue sent his writ vnto the Ordinary, cõmanding him to suffer his prisoner to make his purgation, or might haue pardoned him, or set him at liberty without making his purgation: and if one reade as a Clerke, and yet the Ordinary will refuse him, notwithstanding he shal haue the benefit of his clergy: and on the other side, if the Ordinarie will say that he doth reade as a Clerke, whereas in truth he doth not reade as a clerke, the court must giue iudgement that he shall be hanged, and cause execution to be done of him. And further, to prooue, that the Temporall Court is Iudge of the reading, the Court doth appoint the verse or place to the prisoner to reade, and not the Ordinarie: and also doth set a Fine vpon the Ordinarie, for saying that the prisoner doth reade

15. H. 7. 9.

Stat. 18. Eli. 6

Fit. cor. 44. 17

34. H. 6. 49.

reade as a Clerke, where he doth not, which the court could not do, if the reading were referred to the Ordinarie.

31.Ed.4.21. 9.Ed.4.28.

34 If a felon doth not reade as a Clerk before the Iudge at the time of his arraignement, whereupon he is adiudged to be hanged, yet in fauour of life, if he do demaund it at another time vnder the gallows, if any of the Iudges do passe that way, and doth reade as a Clerke, he shal haue the benefit of his clergie, although there be no Ordinarie there to demaund him: But this is in case where the felon is arraigned and iudged before the Iustices of the kings Bench; or else in case where he is arraigned and iudged before the Iustices of Gaole deliuerie, and it is entred by the Court, non legit vt Clericus, and then for some cause he is reprieued vntill the nert Session, and then againe he is demanded if he can reade, and then he can and doth reade: in this case he shall haue his clergie in fauour of life. And though he was taught to reade in the Gaole, this shall saue his life, but the Gaoler shall be punished for it.

34.H.6.49. A felon doth reade vnder the gallowes.

3.& 4.Eliz. Dyer fol.205.

35 The court vpon the suit of the prisoner may allow him the priuiledge of his Clergy in the absence of the Ordinary, or without the aduice of the Ordinary, or without demanding of the Ordinarie, vtrum legit vt Clericus an non: and so the court need not expect the presence of the Ordinarie, if he faile of his attendance: for the court doth vse the Ordinary but as a minister in this cause, to confirme their iudgement in allowance of clergie, and to heare his opinion, if the prisoner be worthy of clergie or not: Because the maner and order is, for the Ordinarie to deliuer a booke to the Iustices, who open it, and assigne the verse that the prisoner shall read: and the Ordinary receiuing the booke of the Iustices, doth come to the prisoner, & command him to read that verse, which being done, the Court doth demand of the Ordinarie, vtrum legit vt Clericus an non? and the Ordinarie doth answer, legit, or non legit: and then the Court doth allow that which the Ordinary saith, if it be true, or otherwise not. And moreouer the Ordinary was in former times vsed by the Iustices to another purpose, viz. to know if the prisoner were within orders or not, which the temporal court could not take knowlege of, for if he were within orders, he should haue had the priuilege of the Church, whether he did reade or not, by shewing the letters of his orders, or by the Ordinaries certificat, vntill the Statute of Ann 28.H.8. was made, by the which it was ordained, That such as be within holy orders, shalbe & stand vnder the paines & damages for their offences, & be vsed and ordered to all intents, as other persons not being within holy orders shall be. And further, it may be that the offendor hath been a committer of sacrilege, an heretike, or an apostata, or some other grieuous offendor, so that the court hearing the Ordinary willing to refuse him, would also refuse him.

To what vse the Ordinarie is imployed.

Ann.28.H.8.1 Clerks within Orders shalbe vsed as others be.

36 There is a difference of reading, for it may be that the prisoner may reade two or three words of the verse that is assigned vnto him by the Court, but not the whole verse, which is a kinde of reading, but not such a reading as a clerke ought to make: for if he will reade as a clerke, he must reade the whole verse. But although at the first he beginneth with spelling, and after doth read as a clerke, yet in fauour of life hee shalbe allowed for a clerke, and the forme of entry vpon request of clergie, is, Et tradito ei libro, legit vt clericus.

9.Ed.4.28. what is reading as a Clerke.

8.Elizab. Dyer 245.

37 Though the Court may giue allowance of Clergie in the Ordinaries ablence, yet that shal not excuse the Ordinary of his attendance in proper person,

The Ordinaries attendāce

ſon, or by his deputy, vpon paine of a fine to be aſſeſſed vpon him by the court: which deputy ought to haue and bring with him ſufficient letters of the Ordinary, vnder his ſeale, teſtifying the authority which the Ordinary hath giuen him: and though his warrant be but to challenge Clerkes arraigned (and not Clerkes conuicted) yet the warrant is good enough, and ſhall be allowed. And if two ſeuerall perſons doe claime to be Ordinaries, the Court ought not to allow either of them, but muſt write to the metropolitan to make certificat who of right ought to be Ordinarie. 25. Ed. 3. 14.

Contention who is Ordinarie.

A prieſt ſhall haue no fetters.

38 He that is indicted by the name of a Clerke, or appeareth to the Iudge, to be a prieſt, ſhall not vpon his arraignment ſtand at the barre in fetters. And ſo was the Law in antient time for euery priſoner, as Britton reporteth. Fit. Cor. 452. Britton.

39 Bigamie in times paſt was a counterplea to Clergie, viz. to alleadge, that he who demaundeth the priuiledge of his Clergie, was married to ſuch a woman, at ſuch a place, within ſuch a Dioceſſe, and that the ſaid woman died, and that hee married an other woman in ſuch a place in the ſame or an other Dioceſſe, and ſo he is Bigamus: Or if he hath beene but once married, to ſay, that ſhe which he married was a widow, and before had beene the wife of ſuch a man: which allegation ſhould haue beene tried by the Biſhop of the Dioceſſe where the marriage was alleadged to be ſolemnized: and it being certified by the Biſhop, that he was Bigamus, the priſoner ſhould haue beene put from his Clergie: Which was by a Conſtitution made at the Counſell of Lions, as it appeareth by the ſtatute of Bigamie, made Anno 4. E. 1. for before that Counſell of Lions, euery man that had bin twice married, or had married a widow, ſhould haue had the priuiledge of Clergie. But that Lawe was ſithence altered by the Statute of Anno 1. Ed. 6. whereby it is enacted, That if any perſon or perſons by this Statute, or by any other Statutes or Laws of this realme, ought to haue or to be admitted to the benefit of his or their Clergie, that the ſame perſon or perſons ſhall be from hence forth admitted and allowed to haue his or their Clergie, although they or any of them haue beene diuers and ſundry times married to any ſingle woman or ſingle women, or to any widow or widowes, or to two wiues, or moe: Any law, ſtatute, or vſage, to the contrarie notwithſtanding. And though ſome haue affirmed, that the foreſaid Statute of 1. Ed. 6. was abrogated by a braunch of a Statute made 1. & 2. Ph. & Mar. 8. which did repeale all ſtatutes, prouiſions, and articles made againſt the ſea of Rome, ſince the twentieth yeere of king Henrie the eight, and the Pope by his Decretals brought in the ſame exception of Bigamie, which was obſerued and obeyed as a common Law, vntill the ſaide Statute of 1. Ed. 6. But that foreſaid Statute of 1. & 2. Ph. & Mar. 8. was alſo after repealed by the Statute of Anno 1. Eli. 1. for the which and ſome other cauſes, it is agreed and holden for Law, that the before rehearſed Statute of 1. Ed. 6. doth ſtand and remaine in force, and Bigamus ſhall haue his Clergie. Sta. 4. H. 7. 15. Sta. 1. Ed. 6. 3. Eliz. Dyer. fol. 201.

Bigamus ſhall haue his Clergie.

Another time conuict.

40 It is a good counterplea to him who demandeth his Clergie, to ſay, that he had another time the benefit of his Clergie, when he was arraigned of another felonie, and ſhew the certaintie thereof, when and where he was arraigned, and had his Clergie, to demaund iudgement if hee ſhall haue his Clergie againe: Which counterplea was ordained by the Statute of Anno 4. H. 7. for by the common Law, if a man had once enioyed the benefit of his Clergie for felonie, and after committed felonie againe, yet hee ſhould haue had the priuiledge Sta. 4. H. 7. 13.

uiledge of his Clergie againe, and so often as he had committed felonie, vntill the said statute did restraine him by these words: viz. Where vpon trust of the priuiledge of the church, diuers persons haue bẽ the more bold to commit murder, rape, robberie, theft, and al other mischieuous deeds, because they haue bin continually admitted to the benefit of their clergie, as oft as they did offend in any of the premisses: In auoidance of such presumptuous boldnesse, it is ordained, That euery person (not being within orders) which once hath bin admitted to the benefit of his Clergie eftsoones arraigned of any such offences, be not admitted to haue the benefit or priuiledge of his clergie: and that euery such person so conuicted for murder, to be marked with an M. vpon the brawn of the left thumb, & if it be for felony, the same person to be marked with a T. in the same place of the thumb: & these markes to be made by the gaoler openly in the court before the Iudge, before such person be deliuered to the Ordinarie. Prouided alwayes, if any person at the second time of asking his clergie, because he is within orders, hath not there ready his letters of his orders, or a certificat of his Ordinarie witnessing the same, that then the Iustices before whom he is so arraigned, shal giue him a day by their discretion, to bring in his said letters or certificat. And if he faile, and bring not in at such a day his said letters, nor certificat, then the same person to lose the benefit of his clergy, as he shall doe that is without orders. By which stat. it doth appeare, that he that is within orders is excepted, and that he may haue his clergie the second time, vpon the shewing of his letters of orders, or his Ordinaries certificat of the same, this statute notwithstanding. But after by the statute made Añ 28. H.8. & 32. H.8. it was enacted, That all such persons as be, or shall be within holy orders, which by the lawes of this Realme ought or may haue their clergy for any felonies, & shall be admitted to the same, shalbe burned in the hand, in like maner and forme as lay Clerkes bin accustomed in such cases, and shall suffer and incurre after, all such pains, damages, and forfeitures, and be ordered and vsed for their offences of felony, to al intents and purposes, as lay persons admitted to their clergie, be, or ought to be ordered and vsed by the lawes and statutes of this Realm: Any laws, statutes, prouisions, customes, &c. notwithstanding. The force and effect of part of which said statutes of 28. H.8. & 32. H.8. is in some sort attenuated by a braunch of the statute of Añ 1. Ed. 6. (as some do conceiue it) which doth ordaine, That in all other cases (sauing such as be mentioned in the sayd Act) all and singular person & persons, which shall be arraigned, or found guiltie vpon his or their arraignement, or should confesse the same, or stand mute, or would not answer directly, should haue and enioy the priuiledge and benefit of his and their clergie, the libertie and priuiledge of Sanctuarie, in like manner and forme, as he or they might or should haue done before the foure and twentieth day of Aprill, Anno 1. H.8. at which time a man within orders should haue had the priuiledge of his clergy seuerall times: And by this Statute he shall not be burned in the hand as a lay man shall. But yet in all those cases wherein a man is put out of his Clergie, by the Statute of Anno 1. Ed. 6. and also in all other cases wherein Clergie is taken away by any Statute made sithence Anno 1. Ed. 6. a man within orders is as well put out of the Clergie, as a lay man, euery of those Statutes being generall and without exception.

How the conuict shall be marked.

How offenders that be within orders shall be vsed.

41 Because diuers persons haue bẽne in times past indicted, arraigned, and some of them Clerkes conuict, and some of them Clerkes attainted, and some of them outlawed for Murder, Burglary, Robbery, and other Felonies,

& 28. H.8. c. 1. & 32. H.8. c. 3.

& 1. Ed. 6. c. 12 See Br. 24.

before Iuſtices of Peace, Iuſtices of Gaole delinery, and Iuſtices of Oyer and Terminer, within diuers Cities, Counties, Franchiſes and Liberties within this Realme: The records of which attainders, outlawries, and conuictions, many times by the negligence of the Clerke of the Crowne, Clerke of the Peace, Clerke of Aſſiſe, and ſuch other as haue had the order, rule, keeping, and gouernance of the ſame Records, haue béene imbeciled, and not readie to be obiected againſt ſuch perſons as haue béene newly arraigned before the King in his Bench, or before other the Kings Iuſtices, for the like and ſuch other offences by them committed or done: And for that it hath not béene knowne certainely, whither to reſort for the ſame Records, becauſe they were not certified into any place certaine, by reaſon whereof ſometimes ſuch perſons and like offendors, which haue béene newly arraigned, as is aforeſayd, haue had the benefit of his or their Clergie, where they ought not, ne ſhould haue had the ſame, if the ſayd Records had béene then preſent in the ſame place where ſuch perſon or perſons were ſo newly arraigned, or elſe certified into ſome other place certaine, where the ſame Records might haue bin ſéene, ſent for, or written for, to haue béene obiected againſt ſuch perſon or perſons ſo newly arraigned, whereby as well the King, as alſo all other perſons, haue many times loſt their Eſcheats, and other aduantages and forfeitures, that they ſhould haue had by meane of the ſayd attainders, to the great loſſes of the King and other perſons: and alſo the ſayd offendors haue had their Clergie, where they ought not to haue had, to the great boldneſſe and encouragement of like offendors: For the reformation whereof by a Statute made

Certificat into the K. bench of outlawries, attainders, and conuictions.

Anno 34. & 35. H. 8. it was enacted, That the Clerke of the Crowne, Clerkes of the Peace, and Clerkes of Aſſiſe for the time being, where any ſuch attainder, outlawrie, or conuiction ſhall ſo be had, ſhall not onely certifie a Tranſcript briefely and in few words, containing the tenor and effect of euerie ſuch indictment, outlawrie, or conuiction, and Clerke attainted, before them ſo to be had, made, or pronounced, that is to ſay, the name, ſirname, and addition of euerie ſuch perſon and perſons, as ſhall be ſo indicted, and thereupon outlawed, conuicted, or Clerke attainted: and the certaintie of the ſayd felonie, or other offence, whereupon he or they ſhall be ſo outlawed, conuicted, or Clerke attainted, and the day and place of his outlawrie, conuiction, and attainder, and the day and place where and when the ſaid felony or other offence whereupon the ſayd perſon or perſons ſhall be ſo indicted, outlawed, or Clerke attainted, ſhall be made and done, before the King in his Bench at Weſtminſter in the Countie of Middleſex there to remaine of Record for euer, among other the Kings records there, within fortie dayes next after any ſuch attainder, conuiction, or outlawrie ſhall bée had, made, or procured (if the Terme bée then) and if not, within 20. dayes next after the beginning of the Terme next following the ſayde fortie dayes, but alſo ſhall deliuer a Tranſcript of euerie ſuch indictment, whereupon the ſaid perſon and perſons ſhal fortune hereafter ſo to be conuicted, or Clerkes attainted, to the Ordinary, to whom the body of the ſaid perſon or perſons ſhall be committed, at the time that the ſayd perſon or perſons ſhall be committed, the ſayd Ordinarie paying to euerie ſuch Clerke as ſhall write the ſayd Tranſcript, for euerie copie of ſuch indictment, twelue pence for his paines, vpon paine that euerie Clerke of the Crowne, Clerke of the peace, and Clerke of Aſſiſe for the time being, before whom ſuch Indictment, Attainder, Outlary, or Conuiction ſhalbe ſo had, made, pronounced, or remaine, for the non-certifying of euery ſuch record, and delinering of the copy of ſuch Indictment to the ſaid Ordinaries, according to this ſtatute,

5. 34. & 35. H. 8. 14.

to

to lose and forfeit fortie shillings, the one moity thereof to be to the King, and the other moity to him that will sue for the same, by action of Debt, Bill, Information, or otherwise, in any of the Kings courts of record, wherin no Wager of law, Essoine, or Protection shalbe allowed: and the clerk of the Crowne, in the Kings Bench shall receiue the said certificats and transcripts at such time as they shall be tendered and profered vnto them by the said clerks of the Crowne, clerkes of the peace, and clerkes of assise, or by their deputy or deputies, without taking any thing for the same, vpon paine of forfeiture of fortie shillings for euery such certificat by him refused. Prouided alwayes, that if there be any more persons contained and named in any such Indictment other then such person so attainted, conuicted, or outlawed, that then such clerk of the crowne, clerke of assise, or clerke of peace, with whom the record of such attainder, outlary, or conuiction shall remaine, shal within the time before in this act limitted certifie the transcript of such indictment, outlarie, or conuiction onely concerning such person or persons so indicted and attainted, outlawed, or conuicted into the Kings Bench at Westminster, as is aforesaid: which Transcript so certified shall be had and taken as good, effectuall, and auaileable in the Law, to all intents and purposes, against such person and persons, against whom it shall be so obiected, alledged, or pleaded, as if the verie record thereof, whereupon he or they were so indicted, were there present. And be it enacted &c. That the sayd clerke of the crowne in the Kings Bench, for the time being shall at all such times as the Justices of Gaole Deliuerie or Justices of Peace in euery county within this Realme of England do write vnto him for the names of such persons, which be so attainted by Outlarie, or Clerkes attainted or conuicted, and certified into the sayd Bench, shall incontinently without delay certifie the sayd names and surnames of the sayd persons, with the causes why and wherefore they were conuict or attaint, vnto the Justices of Gaole deliuery, or Justices of Peace, vpon paine and penalty to forfeit, for euery name of such persons which shall be so writen for, and not certified by the said Clerke of the Crowne in the Kings Bench to the sayd Justices fortie shillings. Prouided, that this Act, nor any thing therein contained, shall not extend to the Clerkes of the Crowne, Clerkes of the Peace, Clerkes of Gaole deliuerie, neither to any of the Prenotaries within the counties of Wales and Chester, or within the Counties Palantine of Lancaster and Durelme, or any of them, to make any transcript of any such attainder, conuiction, or outlary of any person or persons conuicted, attainted, or outlawed, before the K. Justices of his Counties of Wales nor Chester, or county of Lancaster, Durelme, or any of them, but that the same records shall and may remaine and be in the custodie and keeping of the said Clerkes and Prenotaries, in such maner and wise as they are at this day: this act or any thing therein contained to the contrarie notwithstanding.

42 Though the deliuering of him to the Ordinarie who hath the benefit of his Clergie and making of purgation, bee taken away by the Statute of 18. Eliz. 6. yet because both deliuering to the Ordinarie, and making of purgation were vsed by the space of many generations in this realme, and seuerall lawes, statutes, and some prouinciall councells were made and ordained, touching the ordering, direction, and gouernance of those which as Clerkes conuict or attaint were committed to the Ordinary, and were to make purgation, or not: I will therefore briefly set downe the effect of some of those lawes,

as antiquitie did retaine them. He which had the priuiledge of his Clergie, and was deliuered to the Ordinarie that did demaund him, was not set at libertie, to goe wandring vp and downe the Countrie, but was safely and straitly kept in the Bishoppes prison, hauing for fode vpon the Sunday bread, ale, and pease, and vpon all the other daies, course bread, and small drinke once in the day onely (or in the Kings prison, if the Bishop would haue it so) vntill hee had purged himselfe of the crime wherewith hee was charged, or otherwise had failed of his purgation and could not make it. And if the Bishop would not admitte him to make his purgation, then the King would direct his Writte to the Bishoppe, commaunding him to suffer the same prisoner to make his purgation: or the King at his pleasure might pardon the prisoner, or cause him to be set at libertie without making any purgation. And when a Clerke was to make his purgation, the King was to be made privie thereunto, who did direct his Writ to the Shirife of the Countie where the offendor was prisoned, commaunding him to make proclamation through his Countie, that if any man could shew cause why such an offendor, viz. A. B. prisoner in the Kings or Bishoppes prison should not make his purgation, that then he should appeare such a day, and in such a place, and shew the same cause. And in London the Preacher at Paules Crosse did likewise notifie, that A. B. prisoner in such a prison was to make his purgation in such a Diocesse, at such a place, vpon such a day: at which day assigned, whether any came or not, to giue euidence against him, they vsed to bring forth the prisoner, and to arraigne him of the principall fact, and if hee pleaded or sayde that he was not guiltie thereunto, then an Enquest of Clerkes was charged. And if by the sayde Enquest of Clerkes he was found not guilty of the same offence, then he was set at libertie: and if he were found guilty, he was disgraded.

In what sort a clerke deliuered to the Ordinarie was vsed.

15. H. 7. 19.

The maner of making purgation.

There bee two sorts of Clerkes, whereof the one is a Clerke conuict, and the other is a Clerke attainted. A Clerke conuict is hee who prayeth his Clergie before Iudgement be giuen against him of death, and hath his Clergie allowed vnto him: such a Clerke before the Statute of 18. Elizab. might haue made his purgation, sauing in certaine especiall cases. As a common thiefe could not make his purgation, notwithstanding that hee were but a Clerke conuict: for it is better for the common wealth to haue such an incorrigible person continually to remaine in prison than to goe at libertie to doe more hurt. And likewise, a Monke that was a Clerke conuict, should haue beene deliuered to his Abbot, to haue remained in the Abbey continually, without making his purgation. And also in an appeale, if the Defendant had beene conuict by verdict, and had enioyed his Clergie as a Clerke conuict, he should not haue made his purgation: for if he had made his purgation, then the Plaintife in the appeale should haue recouered his goods without cause, for that by the purgation it doth appeare that hee was not guiltie of the felonie.

A Clerke conuict.

Fitz. Cor. 247.

Fitz. Cor. 417.

Fitz. Cor. 109, 147.

A Clerke attainted is he who prayeth his Clergie after Iudgement of felonie giuen of him: Such a Clerke could not haue made his purgation, for that when he was condemned of felony by iudgement, hee could not contrarie to that Iudgement be purged thereof; that iudgement remaining in force: and therefore there was none other remedy for him, but to purchase the Kings pardon, or else hee must haue remained in prison during his life. And whether this Iudgement of death did follow either vpon Confession before the Coroner

Clerke attainted.

Cozoner, vpon abiuration, oz before the Iuſtices vpon his arraignement, oz vpon triall by verdict of twelue men, if this iudgement were once giuen, hée ſhould not after make his purgation. And though, after his confeſſion of the felony, and before Iudgement giuen againſt him thereupon, he doth pray his Clergie, he ſhall haue it, and might haue made his purgation: for that the confeſſion béeing before a ſecular Iudge, who is not his Iudge, is voide. And for that cauſe the ſtatute of Articuli Cleri cap. 16. doth ground, That an appꝛouer ſhall haue the benefit of his Clergie: and yet he hath confeſſed his offence before a ſecular Iudge. And it is not to be enterpꝛeted that the benefit of this Statute is to be extended onely to ſaue the appꝛouers life, and not to ſet him at liberty by making his purgation, for then hée ſhould haue but part of the benefit of Clergie, and not the whole, which is contrary to the ſaid Statute of Articuli Cleri: If an appꝛouer had wained his appeals, and holden him to his Clergie; he ſhould haue made his purgation, becauſe the Tempoꝛall court doth diſmiſſe him, as a man in whom it hath no iuriſdiction: which waiuer of the appeale did not waiue the confeſſion that hée had made before. And though an appꝛouer in ſome Caſes ſhould not haue made his purgation, yet that was in ſuch Caſes onely, where he did not pꝛay his Clergie vntill Iudgement was giuen againſt him of felonie. If one that ſhall abiure the Realme foꝛ felony, had come againe into the Realme without the Kings licence, whereupon hée was taken and bꝛought to the Barre, and that it was demaunded of him, whie hée ſhould not be put to death, and he had demaunded his Clergie, and that was allowed: yet he ſhould not haue béene deliuered to the Oꝛdinarie, but ſent to pꝛiſon againe, vntill hée had obtained the Kings pardon. Foꝛ Clergy would haue ſerued him foꝛ the felonie, but not to excuſe the contempt which he made by comming againe into the Realme without the Kings licence: But it had béene otherwiſe if he had pꝛayed his Clergie at the time when he fled to the Church. By the entrie into the Roule of the Court which made mention of the pꝛiſoners deliuerie to the Oꝛdinarie, it appeareth, that the making, oz not making of purgation did reſt much in the Tempoꝛall Court, and not in the Oꝛdinarie: foꝛ if he were not to make his purgation, then the entrie was, Quod talis commiſſus eſt Ordinario abſq; purgatione facienda: and if hée were to make his purgation, then the woꝛdes, Abſque purgatione facienda were omitted: and in all Caſes where the Tempoꝛall court had determined that purgation did not lie (as in the caſe of Clerke attaint, oz ſuch like) if the Oꝛdinarie had admitted the pꝛiſoner to haue made purgation, and thereby ſet him at libertie, he ſhould haue bin charged with an eſcape: foꝛ the authoꝛity whereby he was committed to pꝛiſon, was Tempoꝛall, and he receiued him from the Tempoꝛall Court, oz otherwiſe the Oꝛdinary could not haue retained him in pꝛiſon. And thereforе the Tempoꝛall court had ſome what to do with ſetting him at libertie out of pꝛiſon. If one had béene conuicted of diuerſe felonies, and had béene admitted to his Clergie, in that caſe hée ought to haue made purgation foꝛ them all. But the foꝛce of the foꝛeſaide Lawes, touching committing of Clerks to the Oꝛdinary, and making of purgation is altered by the before mentioned ſtatute of Anno 18. Eliz. whereby it was enacted, That euery perſon and perſons which ſhall be admitted and allowed to haue the benefit oz pꝛiuiledge of his oz their Clergie, ſhall not thereupon be deliuered to the Oꝛdinarie, as hath béene accuſtomed but after ſuch Clergie allowed and burning in the hand, accoꝛding to the Statute in that behalfe pꝛouided, ſhall

Clergie after Confeſſion.

Appꝛouer.

9.E.2. 16.

Fi.Cor.228.

27.H.6.7.
13.E.4.3.
Fi.Co.56.247

Fi.Cor.155.

In whom reſted the making of purgation.

Eſcape foꝛ ſuffering purgation.

Fitz.Cor.232.

St 18 El.6.

St.4 H.7.13.

Clergy allowed without deliuerie to the Ordinarie.

forthwith bée enlarged and deliuered out of Prison by the Iustices before whom such Clergie shall bée graunted, that cause notwithstanding. Prouided neuertheless, that the Iustices before whom any such allowance of Clergie shall bée had, shall and may for the further correction of such persons to whom Clergie shall bée allowed, detaine and kéepe them in Prison, for such conuenient time, as the same Iustices in their discretions shall thinke conuenient, so as the same doe not exceede one yéere imprisonment: Any Lawe or vsage heretofore had to the contrary in any wise notwithstanding.

The

The Kings Pardon.

THe Kings Pardon is a barre to an Indictment of treason or felonie: which graunting of Pardon is one of the moſt ancient and honourable prerogatiues that is annexed to the Imperiall Crowne of this Realme, being an authoritie in a ſort to reuiue a dead man, and to continue him in life, whom the Lawe adiudged to die. And it is only granted vpon a good hope that the King hath of the amendment of the life of that ſubiect, who hath offended his Lawes, and whoſe crime his owne conſcience doth aſſure him that he may pardon, notwithſtanding his othe taken at his coronation, (which othe is, that hee will to the vttermoſt of his power, cauſe equall and right iuſtice to be done in all iudgements, and diſcretion in mercy and truth:) for as Bracton ſaith, The King at his coronation, by an othe taken in the name of Ieſus Chriſt the ſonne of God, ought to promiſe his ſubiects three things: The firſt, that he will commaund, and doe his whole indeuour during his raigne, that true peace may be performed to the Church of God, and all his people: The ſecond, that he will by all meanes reſtraine euery kind of rapine and oppreſſion: The third, that in all Iudgements he will commaund iuſtice and mercie to be obſerued, that by his mercifull dealing with others, the God of mercie may take commiſeration vpon him, and that by his iuſtice all his people may enioy peace.

Bracton. The Kings othe at his coronation.

2 Becauſe authoritie to remit and pardon Treaſons, Murders, Manſlaughters and other felonies, with diuers others of the moſt ancient prerogatiues, and authorities of iuſtice, appertaining to the imperiall Crowne of this Realme, were ſeuered and taken from the ſaide Crowne, by ſundrie gifts of the Kings of this Realme, to the great diminution and detriment of the royall eſtate of the ſame, and to the hinderance and delay of iuſtice: For reformation whereof, by a Statute made Anno 27. H. 8. it was enacted, That no perſon or perſons, of what eſtate or degree ſoeuer they bee, ſhall haue any power or authoritie to pardon or remit any treaſons, murders, manſlaughters or felonies whatſoeuer they be: nor any acceſſories to any treaſons, murders, manſlaughters, or felonies: or any outlawries for any ſuch offences aforeſaid, committed, done, or diuulged, by, or againſt any perſon or perſons in any parts of this Realme, or Wales, or the Marches of the ſame. But that the King his heires and ſucceſſors Kings of this Realme, ſhall haue the whole and ſole power and authoritie thereof vnited and knit to the imperiall crowne

27. H. 8. 25

None but the King ſhal pardon treaſons, felonies, &c.

of

of this realme, as of good right and equity it appertaineth: any grants, vsages, Acts of parliament, or any other thing to the contrary notwithstanding.

3 But because the Kings of this Realme haue not had that circumspection in graunting of pardons, which Bracton doth thinke fit, and haue beene many times deceiued in their grants by false suggestions: and for that offendors in times past were greatly encouraged, and lesse feared to offend, in respect that pardons of manslaughters, robberies, felonies, and other trespasses against the Peace, were so easily graunted: For the redresse whereof, by a statute made Anno 2. Ed. 3. it was ordained, That no such charters should be graunted, but where the King may doe it by his oathe, that is to say, in case where a man doth kill another in his owne defence, or by misfortune: which saide Statute was after rehearsed and confirmed by another Statute made Anno 4. Ed. 3. And also by another Statute made Anno 14. Ed. 3. the effect of the same was rehearsed and confirmed, and it was moreouer ordained, That if any charter of pardon were from thencefoorth graunted contrary to the purport of the sayd Statutes, that then the same should be accompted as voide.

In which cases only the K. may grāt pardon of felony &c.

St. 2. Ed. 3. 2.

St. 4. Ed. 3. 13. St 14 Ed. 3. 16

4 And though there bee words large enough in the foresayde Statutes to make frustrate all those charters of pardon, which be graunted against the forme of the same Statutes: yet by putting into the Charters of pardon these words, viz. Non obstante aliquo statuto, actu, ordinatione in contrarium edicto, the force of those Statuts be cleane taken away, and not onely of those, but also of all other in which this clause of Non obstante is inserted: for it is a dispensation of the statute, and commonly put in euery Letters patents. But because the Kings of this Realme, were ofttimes deceiued in granting of Charters of pardon, by the false and vntrue suggestion of others: Therefore, to auoide those abuses, by a statute made Añ 27. Ed. 3. it was accorded, That in euery charter of pardon of felony, which shalbe granted at the suggestion of any person, the suggestion, and the name of him that maketh it, shall be comprised in the same charter. And if after the suggestion be found vntrue, the charter shalbe disallowed, and accounted nothing worth; And the Iust. before whom such charters shalbe alleaged, shal enquire of the same suggestions, and if they find them vntrue, they shall disallow the charters, and proceede further as the Law requireth.

Non obstante in a pardon.

St. 27. E. 3. 2.

The suggestion comprised in the pardon.

5 Because the Commons did complaine in Parliament of the outrages, mischieues, and dammages which did come to the Realme, by treasons, murders, & rauishments of women commonly done and committed, and the rather, for that charters of pardon were too easily granted thereof: and did desire the King, that such charters of pardon might no more be granted in those Cases. Wherunto the K. did answer, that he would yeeld to their petition, sauing the prerogatiue, and regall authority, which his progenitors before that time had: And to the intent that the King would be certainely informed before, of what offences he did graunt pardon; Therefore by a Statute made Anno 13. R. 2. Star. 2. the King did graunt with the assent of the Parliament, That no Charter of pardon shalbe allowed before any Iustice for murder, for the death of a man slaine by awaite, assault, or malice prepenced, treason, or rape of a woman, vnlesse, the same murder, death of a man slaine by awaite, assault, or malice prepenced, treason, or rape of a woman be specified in the same Charter.

St. 13. R. 2. st.

The offences shalbe specified in the pardon.

And

And if a Charter of the death of a man be alleadge before any Iuſtice, in which Charter it is not ſpecified, that he of whoſe death any ſuch is arraigned, was murdered or ſlaine by awaite, aſſault or malice prepenced, the ſame Iuſtices ſhall enquire by a good Enqueſt of the viſne where the dead was ſlaine, if hee were murdered, or ſlaine by awaite, aſſault, or malice prepenſed. And if they ſhal find, that he was murdered or ſlain by await, aſſault, or malice prepenſed, the charter ſhall be diſalowed, and further therein ſhalbe done as the Lawe requireth: which ſaid ſtat. was after confirmed by the ſtatute of Anno 16.R.2. And therefore, whereas, if a man before this Statute, had counterfeited the Kings great or priuy Seale, and the King hath pardoned him all felonies, homicides, robberies, & other treſpaſſes; by the common Law his pardon ſhould haue beene allowed, and he diſcharged, which ſithence would not be allowed, vnleſſe the treaſon were ſpecified in the charter of pardon.

St. 16.R.2.6. 3.Ed.3.24.

Note for an Appruers pardon.

6 For that many common and notorious Theeues indited of ſeuerall felonies, murders, and rapes in diuers countries, and vpon the ſame, as well before the Kings Iuſtices, as before the King himſelfe, being arraigned of the ſame felonies, for the ſauing of their liues, did in times paſt become appruers, to the intent, that in the meane time by Brocage, and great gifts beſtowed vpon certaine perſons, they might purchaſe & obtaine their charters of pardon: and then after their deliuerance became more notorious Theeues, than they were before: for the redreſſe whereof, and to the intent to puniſh him with diſcredit and forfeiture who purſueth ſuch a charter, there was a ſtatute made Añ 5.H.4. which doth ordaine, That if any man or woman doe deſire or purſue, or cauſe to be requeſted or purſued for any charter of pardon, for any felon arraigned of felony, murder, or rape, which for the ſafegard of his life doth become an appruer: then the name of him or her which purſueth ſuch charter, ſhalbe put in the ſame charter, making mention that the ſame charter is granted at his requeſt and inſtance. And if he to whom the charter is granted, after his deliuerance becommeth a felon, the ſame perſon who puſued for his charter, ſhall forfeit a C. li. to be leuied to the Kings vſe.

St.5.H.4.2.

9.Ed.4.28. 21.H.4.15.46 Fitz.Cor.124. 5 Abiur.15. Co li.6.13.

Pardon of the felonie, but not of the attainder.

7 If a man be attainted of felony, and the K. doth pardon him all felonies, this is not ſufficient, neither will it auaile him, becauſe in the charter there is no pardon of the attainder. As one abiured the realme for the death of a man, and returned againe without the Kings licence, and being brought to the bar, he pleaded the K. pardon, and becauſe it made no mention of his abiuration, which was his attainder, it was diſalowed. If the K. do by act of parliament grant a generall pardon of all felonies, except burglarie, and an offendor is attainted of burglary, he ſhall haue no benefit of this pardon: for the offence of burglary doth remaine notwithſtanding the attainder thereof.

8.H.4.22. Co.li.6.13.

Pardon of the attainder, but not of the felonie.

8 If a man commit felonie, and is attainted thereof, if the King do pardon him the attainder, and the execution, this will not auaile him, becauſe the felonie doth yet remaine vnpardoned.

22.Ed.4.7. 28.& 29.H.8 Dyer.f.34.

Ioint pardō to two or three

9 If the King do pardon two, three, or moe men, all felonies by them, or any of them committed, this will not auaile them, becauſe felonie is alwaies ſeuerall: & though the ſequell of the Charter be ſeuerall, yet it ſhal not make that which in the beginning of the Charter was ioynt, to bee ſeuerall: But it is otherwiſe if the beginning of the Charter had bin ſeuerall, and the ſequell ioint.

10 If

Grant to be quit of escapes of felons.

10 If the King grant to a man, that he shalbe quit of the escape of prisoners out of his prison, being there for felony, or treason: yet this will not discharge him of voluntarie escape, but only of negligent escape: for voluntary escape is felony, and the K. cannot licence a man to commit felony, but he ought to restraine him of the doing thereof. 3.H.7.15.

A generall pardon by Parliament.

11 Euery person shall take aduantage of a generall pardon graunted by Act of Parliament, without pleading of it. And the court shall giue him the aduantage thereof, though he doth waiue and refuse the benefit of the same Act: but that is to be intended, where the act is general, without any exception: For if there be any persons excepted in the same pardon granted by act of Parliament, then he ought to plead, that he is not any of those which is excepted, and that he was not adherent to M. and so must plead to euery point and thing excepted in the said act of Parliament, to the intent to proue himselfe enabled to enioy the benefit of the said pardon:) vnlesse in the said act of parliament there be mention made, that euery person may take aduantage of it, without pleading of it:) And if he that doth plead that pardon be of the same name that any of those is, which is excepted in the pardon, hee then must in pleading declare the same, and shew that he is another man, and not he which is excepted in the pardon: or otherwise he shall come too late to plead it after. And if he plead it before the Iustices in the countrey, where the Kings atturney is not present, the Iustices shal cause proclamation to be made, that if any will speake for the King, let him come forth, &c. 11.H.4.41. 8 E.4.7. Plo.com.491.

The Kings pardon must be shewed vnder seale.

12 The partie whom it doth concerne ought not onely to plead the Kings pardon granted vnto him by his Charter, without Parliament, but he must also shew it vnder Seale, for that the custodie thereof belongeth onely to him, and to none other: And therefore though he will say that he was at another time arraigned of the same felonie, at the Kings suit, in such a countie, where he pleaded the said Charter, and that was allowed, which allowance is of Record: yet that is no good plea without shewing the Charter. But the Court of fauor will respite the party that pleadeth it, to bring in the Charter at the day assigned. H.11.H.4.41

A writ of allowance of the K. pardon.

13 When a man doth plead the Kings pardon of any homicide, robberie, felonie, or other trespasse, he ought also to bring with him a writ of allowance, testifying that he hath found suretie, according to the Statute of an. 10. Ed. 3. which hath established, That if the King doe grant to any person any Charter of pardon of any homicide, robberie, or felonie, then he to whom the same is granted shall come within three moneths next after the making of the same, before the Sherife and Coroners of the Countie where the felonie was done, and shall find fiue good and sufficient mainpernors, for whom the said sherife and Coroners will answer, that he from thenceforth shall beare himselfe well and lawfully. And the mainprises shalbe sealed, and returned into the chancerie, within three moneths after the end of the said three moneths. And if hee which hath such Charter will ayd himselfe thereby, and hath not found such mainprises, or after such mainprise found, doth beare himselfe otherwise against the peace, than he ought, his charter shalbe accounted void, & of no force. 32.10.E.3.3.

He that hath a pardon shall find sureties for his good abearing.

The good behauiour broken after a pardon.

14 A prisoner that was indited & outlawed of felonie, pleaded the Kings pardon of the same felonie and outlawrie, but shewed no writ of allowance, testifying 3.H.7.7.

ſtifying that he had found ſuerty in the chancery according to the ſaideſaid ſtat. of 10. Ed. 3. neither did he make mention in his plea, that he had found ſuerty according to that ſtatute: nor yet did he vouch the record thereof in the Chancerie: therefore the Juſtices had no cauſe to allow of his charter of pardon. And the ſame offendor after his pardon granted was indicted before the Juſtices of peace of the county where he dwelt, that he did beat and wound A. B. againſt the K. peace, and thereof was convict before the ſame Juſtices of peace, by his owne confeſſion, which record of conuiction was ſent into the Kings bench by the ſaid Juſtices of peace: and for that he had borne himſelfe otherwiſe than he ought toward the peace, his charter of pardon was adnulled, he had iudgement of death, and was hanged.

15 A Charter of pardon ought to agrée with the Indictment, in the name, ſurname, and addition of the party, to whom the ſame Charter is graunted, to the intent, that he may be knowne to be the ſame perſon which is indicted: or 11. H. 4. 39. otherwiſe it is not allowable, ſauing in ſome ſpeciall caſes: As in appeale of death, where the plaintife was non-ſuit after declaration, and the defendant was arraigned at the Kings ſuit vpon the declaration, whereunto he pleaded the K. pardon, which did not agrée with the appeale, in the name of him that was ſlaine, nor in the day, but agréed with the indictment in the death of the ſelfe ſame man, to the which indictment this pardon had before time bin pleaded and allowed. And for that it may well be intended of the ſame death, ſeeing one man cannot haue two deaths, it was allowed, notwithſtanding the variance. 28. & 29. H. 8. Dyer 34. Two men were outlawed in appeale of murder, and they purchaſed their pardon, and had a Scire fac' againſt the plaintife in the appeale, and alſo a Scire facias againſt the Lords mediate or immediate, and the pardon did not agrée with the indictment in the additions, but the parties toke an auerment, that they were the ſame parties which were indicted: and an exception was taken to the pardon, for the words of the pardon were, Pardonauimus &c. W. B. & L. B. omnes & omnimodas vtlagarais verſus præfatos W. B & L. B. ſeu verſus eorum alterũ promulgatas: which words in the premiſſes of the pardon be ioint, where they ſhould haue bin Pardonauimus &c. W. B. et L. B. et eorum alteri, becauſe that euerie felonie is ſeuerall, and for theſe ſeuerall felonies they ſhould haue had ſeuerall pardons: And yet the pardon was allowed. If a man be indicted of felonie by the name of A. B. yeoman, and after the King doth pardon him by the name of A. B. gentleman, eſquire, knight, or &c. all manner of felo- 20. H. 7. Kel. fol. 58. nies; he may plead this pardon, and auerre that A. B. yeoman, & A. B. gentleman, or &c. be one perſon, and this pardon will diſcharge him: for it may be hée was a yeoman at the time of the indictment, and after made gentleman by the King, or by ſome office.

A pardon muſt agrée with the indictment.

Where a charter may vary from the indictment.

4. H. 4. 10. 16 When after non-ſuit in appeale the Kings pardon is alowed, it is vſed to enter the pardon and alowance vpon the bill of appeal: and therefore if there be any indictment of the ſame felonie againſt the defendant, it ſhall be good for him to cauſe theſe words to be entred and indorſed vpon the indictment, viz. Ceſſet proceſſus faciendus ſuper indictamentum, eo quod defendens acquietatus receſſit ab Appello.

The pardon and alowance entred vpon the appeale.

4. H. 4. 10. 17 All this matter of pardons is (in effect) to be referred to indictments, becauſe the Kings pardon is no plea to the parties appeale, for the felon ſhalbe put to death notwithſtanding that: But it is a good plea againſt the King, when

A pardon no plea to an appeale.

when the appeale is determined. And if it be determined by act in law, and not by the act of the partie, the pardon shall not be allowed without warning of the partie: as in appeale, the plaintife doth pursue it vntill he hath outlawed the defendant, in this case by the Outlawry the appeale is determined: and yet if the King doe pardon the defendant, the pardon shall not bee allowed, vntill hee hath sued a Scire facias against the party, at whose suit he was outlawed: And if at the day of the Scire facias returned, the partie doe appeare, the Appellant may pray execution of him, notwithstanding the pardon: but if the appellant be returned warned, and doth make default, the Charter shall be allowed without further suit. In an appeale of murder the defendant pleaded not guiltie vpon his arraignment, and by the enquest was found guiltie of manslaughter, and then prayed and had his Clergy: Whereupon by force of the Statute of an 4.H.7.13. he being a conuict person, ought to be marked by the Gaoler openly in the court: which marking or burning in the hand the King did and may pardon, though it be in an appeale; for burning in the hand is no part of the iudgement, but only a meane to notify to the iudge, vpon an offendors second conuiction, that he once before had his clergie vpon a former conuiction. And for that it was ordained by the Statute of an 18.El.6. That after Clergie allowed, and burning in the hand, the prisoner shalbe forthwith enlarged and deliuered out of prison: which act doth extend as well to the case of the appeale, as to the case of an Indictment: Therefore the King hauing pardoned burning in the hand, the party was also discharged of his imprisonment.

The K. pardon of burning in the hand.

Co.li. 50. & 100. 3.El Dy.201. 201. St.4.H.7.13. St.18.El.6.

Vpon a pardon, a Scire facias against an appellant.

18 A Scire facias vpon a Charter of pardon may be granted against an appellant, though the appellée, which doth pray it, shewth not any release of the appellants made vnto him, or any such other matter in discharge of the appeale; for he shal come time enough to shew that, when the appellant doth appeare vpon the Scire facias. And the appellée may haue a Scire fac' against the appellant, though in the Charter there be not this clause, viz. ita quod stet rectus in curia. 2.R.3.8.

Non-suite doth not ayde an appellee that is outlawed.

19 An appeale was brought against a principall and accessorie, the principall was pursued to an Outlawrie; whereupon an Exigent was awarded against the Accessorie, returnable at a certaine day, at which day the Plaintife was Non-suit in his appeale, and then the Principall came with a Charter of Pardon, and prayed allowance thereof, for that the plaintife was Non-suite, which would not be graunted by the Court, for that the Non-suite did not ayde him, seeing the appeale was determined before against him by the Outlawrie. Fi.Chart.17.

The Kings protection.

20 A man being arraigned of Felonie pleaded not-guiltie, and being demaunded how hee would bee tried, hee shewed forth the Kings protection, and sayd that the same was a sufficient discharge for him, and would make none other answer: whereupon the Justices agreed, that he should be put to his penance, viz. to his paine for e dure. And yet at another time, one being found guiltie of felonie, shewed the Kings Charter, which did not containe any pardon, but only that the King had retained him to goe with him into Gascoyne, and that was allowed, and the Justices did surceale to proceed any further against him. 8.Ed.4.29. Fitz Cor.238

Plo. com. 401 21 A. was indicted for that he did the first day of April, Anno 1. Regis Iacobi, strike B. whereof the said B. died the first day of June then next following. A. upon his arraignement pleaded the Kings pardon by parliament, by which all felonies, offenses, misdemeanours &c. in the Act not excepted, which may be pardoned by the king, before, and until the first day of May were pardoned, released, and discharged against the king: and averred, that neither he, nor the said offence were excepted in the said pardon, and prayed to be discharged. And he was discharged by the said pardon, for that the wound given by the prisoner was the cause of the felonie, the giving of which wound was an offence and misdemeanour against the King, the which the king did pardon by the Act of Parliament, and by that meanes all Acts ensuing upon the same offence were pardoned.

Pardon of a felonie before it was committed.

Oo. j. Standing

Standing mute, or answering indirectly.

At some time hée that is arraigned of felonie is so farre both from making confession of the felonie whereof he is indicted, and also of pleading not guiltie thereunto, that he will make no answer at all, but stand mute of malice, and euill will: or otherwise plead such matter which is no answer to the felonie whereof hée is arraigned, or such a peruerse plea, which is no direct answer to the offence whereof he is indited: Or if he doe answer to the offence, yet he will so conclude his plea, that the same plea can haue no triall: In all which cases he shalbe put to his penance for contemning the Law, and refusing of the ordinarie triall deuised by the Lawe, that is to say, he shalbe put to paine grieuous, and durable, otherwise tearmed, to paine fort e dure, and as it is commonly tearmed, he shalbe prested to death. Which paine is called grieuous, for that it is so heauy and weightie that he is not able to endure it: and it is called durable, because the offendor shall neuer haue ease or releefe of it, but shall die in it.

Stand mute, or not answering directly.

Fit. Cor. 233. 283, 359. 4. Ed. 4. 124. Kel. fol. 70.

2 The paine grieuous and durable was not at the common Lawe, but ordained by the statute of West. 1. made Anno 3. Ed. 1. whereby it was enacted, That notorious felons openly knowne of euill name, who will not put themselues vpon enquests of felonies which men doe prosecute before the Justices at the Kings suit, shalbe put in hard and strong prison, as they which refuse to be tried by the Law of the Realme: but this is not to be intended of prisoners which be taken for light suspition. By which statute it doth appeare, that none shall be adiudged to this paine, if there be not euident or very probable matter to conuince him of the offence whereof he is arraigned, or otherwise that he is a notable theefe, or openly knowne to be of an euill name: which the Iudge ought strictly to examine before he proceed to iudgement against him.

Felons refusing lawfull triall.

3. Ed. 1. 12.

3 The iudgement of penance is onely to be giuen when a prisoner is arraigned at the Kings suit, and not where he is arraigned at the parties suite: for the words of the Statute be (and will not put themselues vpon Enquests of felonies which men do prosecute before the Iustices at the Kings suit:) and therefore

Penance onlie vpon an indictment, and not vpon an appeale.

21. Ed. 3. 18.

therefore in an appeale prosecuted at the suit of the partie, the iudgement of penance, viz. of paine grieuous and durable, shall not be giuen, but an other iudgement, that is to say, that the offendor shall be hanged. And an offendor
40.Ass.pl.40 shall haue this iudgement of penance at the kings suit, although that suit be begun before his due time, viz. within the yeare after the offence committed, where the king ought to haue tarried vntill the yeers end for the interest of the party, who was to pursue his appeale within the yeare.

7.El.Dier 243 4 If a man be indicted and arraigned before Commissioners to heare and determine, for Piracy and Robbery committed vpon the sea, and he will stand mute, and not answer directly, he shall haue iudgement of penance, viz. of
28 H.8.15 paine fort & dure: and that is by force of the statute of Anno 28.H.8. which hath ordained, That all treasons, felonies, robberies, murders, and confederacies committed vpon the Sea, or in anie other hauen, riuer, creeke, or place, where the Admirall hath, or pretendeth to haue iurisdiction, shall be inquired, heard, tried, determined, and iudged in such shires and places in the Realme, as shall be limited in the kings Commission or Commissions, to be directed for the same, in like forme, as if any such offences had beene committed vpon the land. And such Commissions shalbe had vnder the great Seale directed to the Admirall, or his Lieutenant and Deputy, and to three or foure such other, as shalbe appointed by the Lord Chancelor, as often as need shal require, to heare and determine such offences after the common course of the Lawes of this land, vsed for treasons, felonies, robberies, murders, and confederacies of the same, committed vpon the land within this Realme. And if any person happen to be indicted for anie such offence done vpon the Seas, or in anie other place aboue limitted, then such order, processe, iudgement, and execution shall be vsed and made to and against euery such person so indicted, as against traitors, felons, and murderers, for treason, felony, robbery, murder, or other such offences done vpon the land: and such as shall be conuict of any such offence by verdict, confession, or processe, shall suffer such paines of death, losse of lands, goods, and cattels, as if they had been attainted and conuicted of any of the said offences done vpon the land.

Penance for piracie.

15.Ed.4.33. M.3.& 4.Eli. Dier 205.300. 5 The foresaid Statute of West.1. maketh mention onely of felons and felonies: and therefore in high treason, whether it be by indictment, or by anie other means whatsoeuer, the offendor shall not haue the said iudgement of penance, viz. of paine grieuous and durable, but shall haue another iudgement, that is to say, as of a traitor conuict.

No penance for high treason.

8.H.4.2. 26.Ass.pla.19 6 If a man that is attainted of felonie be brought to the barre, and asked what cause he can shew, why he should not be put to death, and he will stand mute: in this case he shall be hanged, and not put to his penance, for he cannot put himselfe vpon an Enquest of felonie, because he was attainted thereof before, and so he is out of the case of the statute.

No penance for a man before attainted.

24.Ed.4.7. 7 If a man vpon his arraignement doth confesse the felonie, and before iudgement at another day he will stand mute by fraud, and so it is found: in this case he shalbe hanged, and not put to his penance, for his iudgement shall be giuen vpon his confession. And so it is, if he do demurre in lawe vpon any point which is adiudged against him, he shalbe hanged: for in both those cases he is out of the purview of the foresaid stat. of West.1. And in like sort he shall

Standing mute after confession.

Demurring in law.

be hanged and not put to his penance, if he be indicted & arraigned for a murder, or manslaughter committed within the kings palace, or where he doth abide, according to the Statute of Anno 33.H.8. if he doe stand mute, or will answer indirectly. 33.H.8.12

Inquirie of him that standeth mute.

8 In all cases where a man upon his arraignment doth stand mute, before he shal be hanged, put to his penance, or otherwise suffer death, it shalbe inquired, if he doe stand mute by fraud, or by the act of God: for if it be by the act of God, the Court ex officio ought to inquire, if he be the same person, and of all other pleas that he might haue pleaded, if he had not beene mute, to haue staied execution. And this inquirie is but of office, and shalbe made by the Marshals seruants, and others. But if it be in case where an issue is ioyned by the consent of the parties, and after when the Enquest doth come, the prisoner doth stand mute, there the Court shall charge the Enquest which appeareth therewith, without putting any of the marshals seruants vnto them, and so change that which was a Jurie by the consent of the parties, to an Enquest of office. And their charge shalbe to enquire of the time when he did speake, and if he be mute of malice, or in delay of his execution, or by the act of God. But this charge or inquiry, ought not to be made or giuen, where the prisoner did speak to the Court when he was at the barre, and after the same day, because he would not ioyne issue, or challenge peremptorily aboue the number appointed to him by the law, be adiudged to his penance: for then it doth appeare to the court that he doth it of malice. And the same law is, if a prisoner after his confession, or attainder, hath continually remained in prison, and is brought before the same Justices before whom he did confesse his felonie, or was attainted, to answere why execution should not be done of him, and he will stand mute: in this case there needeth no inquiry to be made, if he be the same person or not, for that doth appeare to the Justices by his continuall remaining in prison. But it is otherwise if he go at liberty after his attainder, by abiuration, outlawrie, and such like. 43.Ass.pla.30 M.8.H.4.2. 10.Ed.4.12.

The iudgement in penance.

9 The iudgement in the saide penance, viz. in the saide paine heanie, and grieuous, is, That the prisoner shalbe sent to the prison from whence he came, and put into a meane house, stopped from light, and there shalbe laid vpon the bare ground, without any litter, straw, or other couering, and without anie garment about him, sauing something to couer his priuie members, and that he shall lie vpon his backe, and his head shalbe couered, and his feete bare, and that one of his armes shall be drawne with a cord to one side of the house, and the other arme to the other side, and that his legs shall be vsed in the same maner, and that vpon his body shall be laied so much yron & stone as he can beare, and more, and that the first day after he shall haue iij. morsels of barlie bread, without any drinke, and the second day he shal drinke so much as he can three times of the water which is next the prison dore, sauing running water, without any bread: and this shalbe his diet vntil he die. And he against whom this iudgement of penance shalbe giuen, shall forfeit to the king his goods, but he shall forfeit no land. 4.Ed.4.12. 14.Ed.4.7. 8.H.4.2.

The forfeiture.

Fitz.Ecchem. 10.

Iudgement

Iudgement and Execution in Treasons, Felonies, &c.

HAuing written of Treasons & Felonies, & shewed who be principals, and who be accessories therein, how the offendors therein are to be pursued by appeales, or indictmẽts, what pleas they may plead, & how they are to be tried, that the truth of ech persons innocency, or guiltines may appére: I am now to treat of ẏ iudgement & execution which by the laws & statutes of this realme must follow therupon. As first, if he that is arraigned of treason or felony, be acquit thereof, there is none other iudgement, but that the Court doth discharge him, paying his fées. Iudgement where the prisoner is acquit.

2 The iudgement of a man attainted of high treason, is, that he shalbe led backe againe to the place from whence hée came, and from thence be drawne vpon a hurdle to the place of execution, and there be hanged by the necke, and then be cut downe aliue, and his intrals and priuie members be cut from his bodie, and be burned in his sight, and his head to be cut off, and his body to be diuided into foure parts, and then to be disposed at the kings pleasure: sauing that the iudgement of a man which is attainted for clipping the kings money, contrary to the statute of Anno 25.E.3.2. shall be only, that he shalbe drawne and hanged; though it was high treason by the common law, and so is expounded and confirmed by that statute. But if any man shall be attainted of treason, for committing any of the offences made high treason by either of the stat. of anñ 1.M.6.1.& 2.Ph.& Mar.11.5.Eli.11.18.Eli.1.5.El.1.13 Eli.2.23.Eli. 1.27.Eli.2.3.Iac.4. he shalbe adiudged a traitour, and shall haue iudgement, and suffer, as in cases of high treason, viz. he shalbe drawne, hanged, and quartered, as is before mentioned. And though there be no mention made thereof in the iudgement, yet he that is attainted of treason or felonie by verdict, confession, outlawry, or abiuration, shall also forfeit his lands and goods, his wife shall lose her dower, and his blod shall be corrupted: sauing in certaine cases. Iudgement in high treason of a man.

5.El.Dier 230.

8.Treasons.

3 The iudgement of a woman, which shall be attainted of high Treason, or petite treason, is, That she shalbe led backe againe to the place from whence she came, and from thence be drawne vpon a hurdle, to the place of execution, and there be burned to death. But if one man doe murder an other, and the wife The iudgement of a woman traitor.

1.Ric.3.4.

1.El.Dier 254.

wife of him that was murdered be accessorie to her husbands death, the murderer and the wife both shalbe hanged, and she shall not be burned, because she was but accessorie.

Iudgement of a man in petit treason.

4 The iudgement of a man attainted of petite treason, is, That he shall be ledde backe againe to the place from whence he came, and from thence drawne vpon an hurdle to the place of execution, and there to be hanged by the necke, vntill he be dead.

Iudgement in felonie.

5 The iudgement of a man attainted of murder, burglarie, robberie, or other felonie, is, That he shall be led backe againe to the place from whence he came, and from thence carried to the place of execution, and there be hanged by the necke vntill he be dead. And the like iudgement is giuen against a woman, being attainted of any of the same offences.

Misprision.

6 The iudgement in misprision of treason, is, That the offendor shall forfeit to the king his goods and his lands during his life, and shall be perpetually imprisoned during his life.

Attainder of treason by the common lawe.

7 In the foresaide iudgement giuen in high Treason by the order of the common Lawe, there can be no errour assigned, but it is as strong as if it had béene done by Act of Parliament: For the Statute made Anno 33. H. 8. hath ordained, That if anie person or persons shall be attainted of high treason by the course of the common Lawes or Statutes of this Realme, that in suerie such case, such attainder by the Common Lawe, shall bée of as good strength, value, force, and effect, as if it had béene done by authoritie of Parliament. Stat. 33. H. 8. 20.

Iudgement of penance.

8 The iudgement of him, who being indicted of felonie, will stand mute of malice, or not answer directly, or will refuse lawfull triall, being called Penance, or paine fort & dure, is, That the prisoner shall be sent to the place from whence he came, &c. S. Standing mute, &c. 9. P. 4. Ed. 4. 12.

Iudgements in felonie by Iustices of Niſi prius.

9 As touching those who shall giue iudgement against the offendors aforesaid, it is ordained by the Statute of Anno 14. H. 6. That the Iustices before whom Inquisitions, Enquests, and Iuries shall be taken by the Kings writ called Niſi prius, according to the forme of the Statute thereof made, haue power of all the cases of felonie, and of treason, to giue their iudgements, aswell where a man is acquit of felonie, or of treason, as where he is thereof attainted, at the day and place where the saide Inquisitions, Enquests, and Iuries shall be taken, and then from thenceforth to award Execution to be made by force of the said Iudgements. Sta. 14. H. 6. 8.

10 Because it oft times falleth out, that an offendor is found guilty of treason or felony before some Iustices of gaole delinery, for the which Iudgement of death should or might ensue, and yet that person is reprieued to prison, without iudgement at that time giuen against him; and then before the next gaole delinery the same Iustices of gaole delinerie do die, or be remoued, and others be assigned Iustices of Gaole delinery in their places by the Kings Commission, which (as many did conceiue it) could not giue iudgement of that prisoner, so reprieued by the former Iustices, by warrant of the foresaid stat. of 14. H. 6. 1.

Sta. 1. Ed. 6. 7. or for some other cause: For the remedy whereof by a Statute made Añ 1. E. 6. it is enacted, That in all cases where any person shal be found guiltie of any Treason, Murder, Manslaughter, Rape, or other felonie whatsoeuer, for the which iudgement of death should or may ensue, and shall be reprieued to prison without iudgement at that time giuen against him: Those persons that at any time shall by the Kings Letters patents bee assigned Iustices to deliuer the Gaole, where any such person found guiltie shall remaine, shall haue full power to giue Iudgement of death against such person so found guiltie, and reprieued, as the same Iustices before whom such person was found guiltie might haue done, if their Commission of Gaole deliuerie had remayned in full force.

Iudgement by new Iustices.

11 The Iudgement in petit Larceny is, that the offendor shall be led backe againe to the Gaole, Stockes, or place from whence hee came, and there to remaine a weeke, a moneth, or &c. and then in such a Citie, Borough, Market towne, Village where the fact was done, or other place assigned by the Iustices, to be tied to a cart, stripped from the girdle vpward, and whipped vntill his bodie do bleede, once, twice, or thrice, &c. according to the Iustices discretion.

Iudgement in petit Larceny.

12 If a woman be indicted and arraigned of felonie, it is no plea for her to say that she is with childe, but she must plead to the felonie, Not guilty; and if she be found guiltie, then she may alledge, that she is with childe: and then the Marshal or Sherif shalbe commanded to returne an enquest of xij. women before the Iustices, who being then sworne to examine and trie the truth, shal take that woman into a chamber, and search and trie whether she be quicke with childe, or not: and if she be found to be quicke with childe, then execution of her shalbe staied vntill she shalbe deliuered: But if shee be not quicke with child, she shall be hanged presently, for it will not auaile her to be yong with child: And yet whether she be with child, or not, Iudgement shal not be delaied, but shalbe presently giuen against her, that she shalbe hanged: but only the execution of that iudgement shalbe staied. If after shee is reprieued and deliuered of her child, and before the next gaole deliuery she be with child againe, though she be quick with child, execution shal not be staied, but she shalbe put to execution presently. And yet in that case the truth of the matter being inquired of, and found, the shirife, marshall, or gaoler which had the custodie of her, shalbe fined, for keeping her so slackly, that shee had the company of a man.

Stay of a womans execution being with childe.

21. Ass. p. 71. 25. Ed. 3. 42. 12. Ass. p. 11. 33. Ass. p. 2. Fitz. Cor. 240. 253.

Fitz. Cor. 335.

13 If a man attainted of felonie, be adiudged to be hanged, and the Shirife doth carrie him to the place of execution, and doth hang him, and he breaketh the Rope, and falleth downe before he be dead: In this case the sherife must take him, and hang him againe, for his iudgement is, that he shalbe carried to the place of execution, and there be hanged vntill he be dead: And so vntill he be dead, the iudgement is not fully executed.

A man hanged falleth downe before he be dead.

Forfeiture.

Forfeiture.

A felon ſhall forfeit lands and goods.

1 After an offendor is attainted of treaſon, or felonie, and hath had iudgement of death, he ſhall preſently thereby forfeit his goods, & alſo his lands (ſauing in certaine caſes hereafter expreſſed) though it be mẽtioned in the iudgement. And notwithſtanding there is a difference betweene treaſon and felonie, concerning the forfeiture of lands; yet touching the forfeiture of goods, they be all one, for they ſhall be forfeited to the King, as it appeareth by the Statute intituled Prærogatiua Regis, which hath ordained, That the King ſhall haue all the goodes of felons which be condemned, and which be fugitiue, whereſoeuer they be found: and if they haue any freholde, it ſhall be forthwith ſeiſed into the Kings hands, and the King ſhall haue the profites thereof, by the ſpace of a yeare, and a day, and the land ſhall be waſted and deſtroyed in the houſes, woodes, and gardeins, and in all things belonging to the ſame, (except men of certaine priuiledged places.) And after the King hath had the yeare, day, and waſt, the land ſhall be reſtored to the chiefe Lord of the ſame Fee, vnleſſe that before hee redeeme the ſame yeare, day, and waſt of the King, by payment of a fine. But there is a cuſtome in the Countie of Glouceſter, that after a yeare and day, the lands and tenements of felons in that Shire, ſhall reuert, and be reſtored to the next heire to whom they ought to haue deſcended, if the felonie had not beene committed. And in Kent in Gauelkinde (the Father to the Bough, the Son to the Plough,) there all the heires males ſhall diuide their inheritance, and likewiſe women: but women ſhall not make partition with men: And a woman after the death of her huſband, ſhall be endowed of the moitie: And if a woman doe commit fornication in her widowhood, or take any huſband, ſhe ſhall loſe her Dower. 5.17.E.2.ca

Forfeiture of goods.

2 A man being indicted before the Coroner of the death of an other man, and if it be further found by the ſame indictment, that hee did flie for the ſaid felonie, although after he be acquitte of the ſame felonie, and notwithſtanding that the Enqueſt which did acquitte him, doe ſay that he did not flie for the felonie, yet his goods ſhall be forfeited to the King: For the King ſhall take hold of that Record which is moſt for his benefit, and that is the Coroners Record. 22.Aſſ.p.96. Fitz.Forf.35. 7.Eliz.35. Dyer 238. Co.li.5.109.

Flying for felonie.

And in like ſort, if one that is indicted of felonie, is acquitte thereof by verdict, if the Jury which did acquitte him will ſay, that he did flie for the felonie, he ſhall forfeit his goods, which he had at the time of the verdict giuen: which being an auntient law of this Realme, is grounded vpon this reaſon, that Fitz.Forf.32. Fitz.Cor.290. 341.

not-

notwithſtanding his acquitall of the felonie, yet he is to be ſuſpected of the felonie, the behement preſumption which is riſen of him, as well in reſpect of his flying away, as by the indictment. And though the Enqueſt which did find, that he fled for the felonie, be as touching that part of their verdict, but an Enqueſt of office, yet it is not trauerſable, becauſe it is onely touching goods, for the which goods, no trauerſe againſt the King is allowed by the Law, for the law doth accompt goods inter minima, & de minimis non curat lex. And though goods be in compariſon of mans life, or his lands, in the eie of the Law called and accompted Minima, yet they be not of ſo ſmall value, or ſo little to be regarded, but the Judge, or the Coroner ought with all due circumſpection forſee, that the Iurie be not vpon ignorance or ſmall euidence ſeduced to finde an vntrueth, to the vtter vndoing of the partie indicted or accuſed. And in like ſort, if a man be indicted and arraigned of felonie, and it is found by the Enqueſt, or the Coroners Roll, that hee fledde for the felonie, he ſhall forfeit his goodes, though he hath the Kings pardon of the felonie: for the charter of pardon doth containe the preſumption of him, that he is guiltie of the felonie.

Fitz. Cor. 308. 338.

4 H. 7. 18.

3 If a man be indited before the Coroner as acceſſorie to the death of an other man, and it be found, that he fled for the felonie: in this caſe he ſhall forfeit his goods, if he were acceſſorie before the felonie committed. But if it be found before the Coroner, that he was acceſſorie to the felonie after the offence committed, and that he fled for the felonie, he ſhall not forfeit his goods: for the Coroner hath no authoritie to meddle with any that was acceſſorie after the homicide committed, but onely with ſuch, by whoſe means the dead man was ſlain, or who were the cauſes of his death, which the acceſſory after the offence committed could not be. And therefore when he indicted one for receiuing of a murderer, and that he fled, this inditement of the receipt of the Murderer was voide, and conſequently the finding of the flying. But if one man be indicted of felonie as principall, and an other as acceſſorie after the offence committed before Iuſtices; and the principal is attainted by verdict, and the acceſſorie is acquitte, and it is found, that hee did flie for the felonie, he ſhall forfeit his goods: for that Iuſtices aſſigned haue authority to enquire, as well of acceſſories after the felonie committed, as of acceſſories before the felonie.

An acceſſorie fled for the felonie.

The difference of the Coroners and the Iuſtices authoritie.

Fitz. Cor. 406.

4 If one be indicted but of petit larceny, and vpon his arraignment be thereof acquit, and it is found, that he did flie for the felonie, he ſhall forfeit his goods. And likewiſe if he be attainted of petit larceny, he ſhall forfeit his goods, but not his lands.

The forfeiture for petit larceny.

Fitz. Cor. 298. 290 312.

5 This flying away, whereupon the forfeiture of goods doth enſue, may be as wel, where the offendor doth flie before arreſt, as where he doth flie after arreſt: as if a man that is behemently ſuſpected to haue committed a murder, or other felonie, is attempted to be arreſted by the ſhirife, Coroner or any others, and he doth flie away, and is purſued, and becauſe he will not yeld himſelfe to the Kings peace, and be taken, is ſlaine in the purſuite, by thoſe that would haue arreſted him, or by ſome others, that did come to aſſiſt them, and that be preſented of record before the Iuſtices, hauing authoritie to enquire thereof: In this caſe his goodes ſhall be forfeite to the King: although beeing ſlaine, hee could neither be acquit, nor attainted of the felonie, whereof he was ſuſpected. And yet if this man had beene taken aliue, and that it had bin

Forfeiture vpon flying before arreſt.

Forfeiture without attainder.

bin found, that he had fled for the felonie, if he had not also bin indited of the felonie, he should haue forfeited nothing: for without an indictment it could not be proued, that a felonie was committed, and he could not flie for a felony, if none such were done. S.Bra.30. 42.Ass.p.5.

Forfeiture vpon the Exigent awarded.

6 If Proceſſe be awarded vpon an appeale or indictment of felonie against any person, who doth absent himselfe, and not appeare, vntill the Exigent shall be awarded against him; this long absence, which is a flying in Law, shall cause him to forfeit his goods, although after he be acquit of the felonie. And the reason is, for that it doth appeare of Record, that he did flie, or withdraw himselfe, when he absented himselfe vntill the Exigent was awarded against him. But if he hath any reasonable excuse of his absence, as that hee was in prison at the time of the Exigent awarded, or beyond the Sea, or such like reasonable excuse, then he shall not forfeit his goods: and yet if the defendant in an appeale, were out of prison, at the time of the awarding of the Exigent against him, and after when the Outlawrie was pronounced against him, he was in prison, by his imprisonment he may reuerse the outlawrie, but he can not reuerse the awarding of the Exigent, which was lawfully awarded against him, whereupon the forfeiture of his goods did accrue to the King. And the like Law is, if the King had pardoned the felonie, before the Exigent awarded, and the offendor had found suertie in the Chauncerie according to the Statute of Anno 10.Ed.3.3. yet if the Exigent were after awarded against the offendor, the offendors goods should not be forfeited: for it doth appeare of Record, for what cause the goods were saued, viz. because the felonie was pardoned, and therefore the awarding of the Exigent against him, vpon an indictment of felonie, is reuersable, whereupon he should forfeit goods. 22.Ass.p.82. 41.Ass.p.13. Co.lib.5.110. Fitz. Forf.19. 31. 43.E.3.18.

7 If an appeale be pursued against two, viz. against one of them as principall, and against the other as accessorie, and the Exigent is awarded against the accessorie, before the principall is outlawed, the accessorie, shall not forfeit his goods, though he did flie for the felony: for the Statute of Westminster 1. hath ordained, That no person shalbe outlawed vpon appeale of commaundement, force, aide, or receipt, vntill the principall shall be attainted. And yet the appellor shall not let to attach his appeale at the nert Countie, as well against the accessorie, as against the principall. But the Exigent against the accessory shal stay, vntill the principall bee attainted by Outlawrie, or otherwise. But this is intended of an appeale commenced by Bill, and not by Writ; for in an appeale by Writ, it doth not appeare who is principall, and who is accessorie, vntill the appellant hath declared against them. 43.E.3.17.

No forfeiture by the accessorie vntill the principall be attainted. 2c.3.E.1.14.

Forfeiture notwithstanding appearance and pleading.

8 If an Exigent be well awarded against the defendant, and then he doth appeare, and the appellant doth count against him, notwithstanding there be a default in the Writ or Count, whereupon the Writ doth abate, yet the defendants goods shall be forfeit: for by the awarding of the Exigent, the goods shall be forfeit, and no Count which the plaintife can make after, shall cause the defendant to haue his goods againe. And when the defendant hath appeared and pleaded, the proceſſe is determined, which proceſſe is the kings title, and thereunto the defendant hath made no answere. 43.E.3.17.

The forfeiture of a Clerke conuict.

9 A Clerke conuict shall forfeit his goods, viz. (he that is indited or appea-

lee

led of felonie, and thereunto pleadeth Not guiltie, and vpon his arraignement doth desire to be tried by his Countrie, which findeth him guiltie of the felony, and then he prayeth his Clergie before iudgement of death is giuen against him is called a Clerke conuict.) He that committeth homicide by misaduenture, shall forfeit his goods: And so shall he which doth kill a man in his owne defence, forfeit his goods: And likewise he that killeth himselfe, and is felo de se, shal forfeit his goods: And he that being indicted of felony will stand mute, not answere directly, or challenge peremptorily aboue twentie persons, shall forfeit his goods.

Homicide by misaduenture.
4.H.7.2. Killing in his owne defence.
Felo de se.
Standing mute.

10 In some cases an offendor shall forfeit a right, or a thing whereof he hath no possession but onely an action, or title thereunto: As if goods be wrongfully taken, or holden from the possession of the owner, and after the owner is attainted of treason or felonie, those goods shall be forfeited to the King: and the
6.H.7.9. Court of the Kings Exchequer may award processe against the possessor of them, to bring them into the same Court. And so the King shall haue the benefit of an action of trespasse, which the party attainted might haue had against the other for those goods wrongfully taken, or holden away. But if he that
39.Ass. p.63. 30.Ed.3.4. was attainted, were beaten or mayhemed by an other, the King shall not haue an action of trespasse of battery, appeale of mayheme, or other remedy against that party, which did the foresaid iniurie to the person attainted, for that the money to be recouered by the action of trespasse is reduced to no certainty. And if money be owing to a man by obligation, or simple contract, and
Fitz. Cor. 347. after he to whom the money is payable, is attainted of treason or felonie, that obligation and duetie shall be forfeited to the King. And if one man or more be found by obligation to two men, or more, for the paiment of a summe of money, or any other dutie, and one of the Obligées is outlawed, or attainted of treason or felony, the King shall haue the whole Obligation, and the money or
19.H.6.47. 28.H.8. Dyer 30. dutie arising or payable thereby; and the King, or he to whom the King will giue the same debt, shall haue an action in his owne name to recouer it: which action shalbe maintainable, though there be variance betweene the action and
50.Ass.pl.5. 28.Ed.3.94. the specialtie. And in like sort, if a man be Receiuer to an other of his money, and he to whom he is receiuer be attainted of Treason or Felonie, after office found thereof, the King may haue a Scire facias against the Receiuer to receiue this money, and by that meanes the King shall haue the benefit of the action of account, which the party attainted might haue had. And in some cases an offendor in treason or felonie shall forfeit an interest in lands, whereof he himselfe neuer had, or could haue possession, but an authority to dispose: As if he that
21.Ed.Dyer 309. hath the reuersion of lands in fee simple, whereof an other hath the possession for the terme of yeares, doth graunt and assure this land to others, to the vse of himselfe for terme of his life, and after his decease, to the vse of the Executors and Assignes of the grauntor, for the terme of twentie yeares next after the death of the grauntor, the remainder ouer in taile, and after the grauntor is attainted of treason by Act of Parliament, and all his lands, tenements, goods, & cattels which he had to his owne proper vse, were forfeited to the King, and seised in his actuall possession without office, and the grauntor died intestate without assignement of this lease: In this case the King shall haue this terme of twentie yeares as forfeit to him, for it was an interest in the grauntor, and did, and might well remaine in him in expectancie, notwithstanding his estate for the terme of his life; & if the grauntors executors should haue had this lease, they must not haue enioyed it to their owne vse, but as assets in their hands.

In account forfeited.

Forfeiting of an interest.

Forfeiting of a right or action.

Forfeiture of a trespasse.

Forfeiture of a debt.

Ioynt debt forfeited.

And

The King shall not pay the attainted persons debts.

And though the King shall haue such goods, debts, money due vpon accounts, and interest in lands, as were due to the party attainted of treason, or felonie, yet he shall not pay such debts as the said person did owe. Fitz. Cor. 319. 334.

For setting of goods wherein the offendor hath no property.

11 As in the cases aforesaid, and some others, a person attainted may forfeit goods, debts, and rights, whereof he hath no possession, but onely an action, or title: so in some other cases, he may forfeit goods, whereof he hath no propertie, but onely a possession: As if a man deliuer money out of a bagge, or corne out of a sacke, to an other to keepe, and to restore againe when the owner will require it, if the partie to whom the money or corne was deliuered be attainted of Treason or felonie, the money or corne shall be forfeited to the King, and the partie who deliuered the same, hath no remedie to recouer it, for the first owner who deliuered it cannot proue that it was his money when it was out of a bagge, or that it was his corne when it was out of a sacke, for that one sort of money cannot be knowne from an other, nor one sort of corne from an other. But if the money were deliuered in a bagge, or the corne in a sacke, then the owner that deliuered it may come vnto the Iustices before whom the offendor is attainted, and shew the deliuerie of it, and signifie that it was to be restored vpon his request: whereof the Iustices shall enquire by an Enquest of office, and if his suggestion be found to bee true, he shall haue his money or corne againe: But if the money or other thing deliuered by the owner be conuerted to an other commoditie, then the law is otherwise: as if a man deliuer money to an other to buy wooll, or some such other commoditie, and to worke it, lay it vp, or to keepe it in his house, and the partie to whom the money is deliuered, doth buy wooll, &c. and bringeth it to his owne house, and then is attainted of Treason or Felonie, the King shall haue the wooll, &c. as forfeit, and the partie who deliuered the mony is without remedie to recouer his money, or the wooll, &c. for though he might haue had an action of Account against the partie to whom he deliuered his money, if he had liued, and remained vnattainted, yet he shall haue no action or remedie against the King. Fitz. Cor. 4. 323. Fitz. Cor. 389.

For. for default of pursuit.

12 If a man doe steale goods at diuers times from seuerall men, and he is attainted at the suit of one of them, for the goods stolne from him, but is not attainted at the suit of the others: by this attainder the felon shall forfeit to the King not onely his owne goods, but also the goods stolne from those other, at whose suit he was not attainted, though he had no property, but only a possession in those goods: for a felon hath no propertie in goods stolne, but it doth alwaies remaine in the right owner, which property in this case, for default of pursuing the felon, is forfeited to the King. 44. Ed. 3. 44.

A felon hath no property in goods stolne.

For. of other mens goods & his owne.

13 In like sort, if a man do steale goods from an other, & before his attainder, he doth kill himselfe, he shall forfeit to the King not onely his owne goods, but also the goods which he did steale from that other, though he had no property, but a possession in the stolne goods: for the owner of these goods hauing not prosecuted and giuen euidence against the offendor, to attaint him of Felonie, either by Appeale or Indictment, can neither haue restitution of these goods by the common law, nor by force of the Statute of 21. H. 8. 11. Fitz. Cor. 318.

For. where a woman killeth her husband.

14 In the time of King Edward the second, it was holden for law, That if a wife did kill her husband, and after did flie, all the goods within the house,

and

and without, the corne in the barnes, and yard, and that which was growing on the ground, should be confiscat and forfeit to the King: And their reason was, for that when the husband is killed, and no will was made by him of his goods, they ought to remaine to his wife, and then shee being in case, that by the committing of this treason shee cannot haue them, they be forfeit to the King, and confiscat. But that law seemeth to be altered by the Statute of Anno 31. Ed. 3. which hath ordained, That where a man dyeth intestat, the Ordinarie shall depute the next and most lawfull friends of him which dyed intestat, to administer his goods. And moreouer, by the Statute of 21. H. 8. it is further enacted, That if any person die intestat, or the Executors named in any such Testament, refuse to proue the said Testament, then the Ordinarie, or other person or persons hauing authoritie to take probate of Testaments, shall graunt the administration of the goods of the Testator, or person deceased, to the widow of the same person, or to the next of his kinne, or to both, as by the discretion of the same Ordinarie, shall be thought good, taking suertie of him, or them, to whom shall be made such Commission, for the true administration of the goods, cattels, and debts, which he or they shall be so authorized to administer. By which two Statutes it doth appeare, that the law doth not cast the interest of the husbands goods dying intestat vpon the wife, nor giue her such a title thereunto, as shee may either possesse, alien, or forfeit them, vntill she be authorized by the Ordinarie. And in the meane time betweene the husbands death, and that the administration of the goods of the intestat be graunted to some person or persons, the interest of the goods is in the Ordinarie, as appeareth by the Statute of Westminst. 2. 13. Edward. 1. 19.

Anno 2. Ed. 2. Fitz Cor. 423. St. 31 E. 3 11. St. 21. H. 8. 5.

P. 10. E. 4. 1.

15 If he that is made Executor, or which hath taken letters of Administration of the goods of one which dyed intestat, be attainted of Treason or felonie, he shall not forfeit the goods of the testator, or intestat, because those goods be the testator or intestats goods in his custodie, and he hath not them to his owne vse, but a right of disposing of them, towards the performance of the testators will, or to pay the intestats debts: And whereas the law doth allow a woman couert to make a will and to ordaine her husband her Executor thereof, or to make any other person her Executor (by her husbands consent) of her Parophanalia, or Jewels of value, and of such debts as were due to her as Executrix to an other, and of such Obligations, Recognisances, and other specialties as were before mariage made, or acknowledged vnto her, and of such goods as were taken wrongfully from her, before the mariage betweene her husband and her, for the recouerie whereof the husband may haue his actions as Executor to his wife, but not as husband to his wife, neither would they euer haue bin recouered, if she had not made an Executor; and when they be recouered, the Executor shall stand chargeable to others for debts due and paiable by his wife, so farre as the same goods recouered will extend: In this case, if the husband, or that other which is made Executor to the woman couert, shall be attainted of Treason or Felonie, the goods of the wife, or the money recouered, shall not be forfeited to the king, because the Executor hath them, but towards the performance of the womans will, and to satisfie those debts and legacies which she did stand charged to pay.

Executor shall not forfeit his Testators goods.

39. H. 6. 27. 12. H. 7. 22. 18. E. 4. 11. 4. H. 6. 31.

M. 33. H. 6. 31

16 If any person that is ioyntenant, or tenant in common with an other, of goods, be attainted of Treason, or Felonie, the whole goods shall be forfei-

Jointenants forfeiture.

ted to the King. And if a leaſe for the terme of yeares be made to the huſband and wife of certaine lands, and the huſband be attainted of Treaſon, or Felonie, the whole terme ſhall be forfeited to the King. And likewiſe it is of felo de ſe, if a leaſe be made to him and his wife for the terme of yeares, he ſhall forfeit to the King the whole terme. Fitz. Tra. 336 30. Aſſ p 5. Pl. Com. 258.

Confiſcation of goods.

17 The law in ſome caſes doth give an other title to the King of goods that late were another perſons, and doth not terme it a forfeiture, but a confiſcation of goods, and that is, when the goods were not claimed, or title pretended vnto them by any other: As if a man be indicted for the felonious ſtealing of an other mans goods, where in truth thoſe goods were his owne, and the goods be brought into the Court as a manoure againſt him; and it is aſked of him, whoſe thoſe goods be, and he doth diſclaime to have any propertie in them: by this diſclaimer he ſhall loſe the goods, though they were his owne: and though he be acquit of the felonie, the goods by this diſclaimer ſhall bee confiſcat to the King: but if he had not diſclaimed in them, the goods ſhould haue bin reſtored vnto him. Fitz. Cor. 335 3 68.

Confiſcation by diſclaimer in his owne goods.

Fitz. Cor. 391

Confiſcation by diſclaiming in the goods of others.

18 If goods be found in the poſſeſſion of a felon, which he doth diſauow, and after he is attainted for the ſtealing of other goods, but not of thoſe: In this caſe the goods which he did diſauow ſhall be confiſcat to the King: But if he had bæn attainted for the ſtealing of thoſe goods, they ſhould haue bin termed goods forfeit, and not confiſcat. Fitz. Cor 368 Fitz. Forf. 24.

Confiſcation of goods left out of an appeale.

19 If one doe bring an Appeale of Robberie againſt a felon, and leaueth out of his Appeal ſome part of the goods robbed: in this caſe the King ſhal haue thoſe goods which be left out of the Appeale, for the plaintife cannot enlarge his Appeale, nor recouer thoſe goods left out. And therefore ſæing the felon can make no executor, nor any can be adminiſtrator to him, and ſo no other perſon is intituled to haue thoſe goods, the King ſhall haue them as confiſcat, according to the old text, Quod non capit Chriſtus, capit fiſcus: And the appellant ſhalbe thus puniſhed, by the loſſe of his goods, for his negligence, attenuating, concealing of the robbers offence. Fitz. Cor. 100. Co. li. 5. 110.

Confiſcation by a falſe appeale.

20 If a man bring an Appeale of Robberie againſt an other, which take the Appellants goods lawfully, and not felonioufly (viz. found them in the high way) & it is ſo found by verdict: in this caſe, though the appellee hath no cauſe to detaine them againſt the appellant, for that they were his owne goods, yet the plaintife ſhall loſe them for his falſe appeale, and they ſhall be confiſcat to the King; and alſo the appellant ſhall bee committed to priſon, for charging the defendant with robberie, whom he did know came lawfully by the goods, and ſo for malitious ſæking of a mans bloud without cauſe: and the defendant ſhal be diſcharged. Fitz. Cor. 367 Co. li. 5. 110.

Waife.

21 There is an other kind of forfeiture of felons goods to the King, which is called a waif, and that is, when a felon vpon huy and cry, or other purſuit after him, or for feare to be taken, or otherwiſe to eaſe himſelf of carriage, doth without huy and cry waiue, caſt away, or goe from the goods that hee did ſteale, and hath in his poſſeſſion, or ſome part thereof, and doth flye away, whereupon the Kings Officers, or ſome other in the Kings right, doth ſeiſe thoſe goods: In this caſe the goods ſo ſeiſed be called a waife, and the King ſhall re-

Co. li. 5. 109.

taine

taine them to his proper vſe, if the owner of them doth not make freſh ſute after the felon, to attaint him for thoſe goods. And if the owner doe make freſh ſute after the felon, hee ſhall haue his goods againe, notwithſtanding the waiuing and ſeiſing of them. And this forfeiture of goods by waife, is a penalty which the law impoſeth vpon the owner of thoſe goods, for default of freſh ſute againſt the felon, and for omitting his duetie in purſuing and apprehending of the felon, being a pernitious and corrupt member of the Common-wealth. And by the Statute of 21.H.8. the Juſtices before whom any felon or felons ſhall be found guiltie, or otherwiſe attainted by reaſon of euidence giuen by the partie robbed, or owner of any money, goods, or cattels robbed, or by any other by his procurement, haue power to award from time to time, writs of Reſtitution for the ſaid money, goods, or cattels, as though any ſuch Felon or Felons were attainted at the ſute of the party in Appeale. But if a felon do ſteale goods, and carrie them into a Manno, and there leaue them, or leaue them in his owne houſe, or in the houſe of any other, or in the cuſtody of any other, or hide them in the ground, or in any ſecret place, and after doth flie, theſe goods ſhall not be adiudged in law to be waiued, nor ſhall hee forfeited: for if the felon hath not the goods with him when hee doth flie, or doth waiue them for feare to be taken, they ſhall not be accounted waiued or forfeited, but the owner may take them againe without freſh ſute, for that there is no default in him.

P.21,H.8. 11. Co.li.5.109.

22 If a felon do ſteale goods, and after doth waiue them, the owner of them may reſeiſe the ſame goods, and carrie them away twentie yeres after the waiuing of them, if in the meane time no Officer of the Kings, nor of any Lord of a libertie, hath ſeiſed them before the owner: But if any Officer of the Kings, or of any Lord of a Franchiſe hath ſeiſed them before, then the owner muſt ſue an Appeal againſt the felon, and ſo he may haue his goods againe, if he hath made freſh ſute: or elſe the owner muſt procure the felon to be indicted, arraigned, and found guiltie, or otherwiſe to be attainted by euidence giuen by himſelfe, or by ſome other by his procurement, and by that meanes obtaine a writ of Reſtitution to be awarded by the Juſtices before whom the ſaid felon ſhall be arraigned, according to the foreſaid ſtatute of 21.H.8.11. And the like law is, if a felon do ſteale goods, and doth not waiue them, nor any Huy and crie is made vpon him, but one in the Kings right doth take the goods from the felon, vpon ſuſpition that he hath ſtoln them, yet the owner vpon freſh ſute ſhal haue reſtitution of them againe, for it may be, that the owner had not intelligence of the ſtealing of his goods a long time after they were ſtolne, and then could not make freſh ſute, nor leuie huy and crie.

The owner ſeiſeth goods waiued.

21.Ed.4.16.

23 Where can be no waife but of goods ſtolne (ſauing in certaine caſes) for if one doe take goods as a treſpaſſor, and doth goe from them, no man can ſeiſe them as a waife: And therefore in an action of Treſpas of goods taken away, if the defendant do iuſtifie for a waife, it is a good iſſue for the plaintife to ioine, that the goods were not ſtolne. And if a man do fly for a felonie, and leaue his houſe & goods, yet thoſe goods ſhall not be a waife, for that they were not ſtolne. And in ſome ſpeciall caſe there may be a waife, though there be no ſtealing, as vpon a huy and cry leuied, a man that hath committed no felony doth leaue his own goods, and doth flie to a church, thoſe goods may be ſeiſed to the Kings vſe for a waife.

No waife but of ſtoln goods.

P.13.Ed.4.5.

29.Ed.3.25.

Waife of goods not ſtolne.

No waife of goods ſtolne from an Alien

24 If the goods of an Alien which hath the Kings ſafe conduct both for bodie and goods, be ſtolne from him, and by the felon be after waited, and refuſed, yet thoſe goods cannot be claimed or ſeiſed by the Officers of the King, or of any Lord of a Franchiſe, for a waife: for when the King hath graunted to the Alien ſafeconduct both in bodie and goods, and this is a couenant betweene the King and him; then if a felon doe ſteale his goods, and after waine them, it is no reaſon that the Alien ſhould loſe them, and be put to ſue againſt the felon, but he muſt ſue to the King vpon his couenant: And therefore the K. cannot haue thoſe goods as waife, and by the ſame reaſon he cannot graunt them to an other, neither can any haue them by preſcription. 13.Ed.4.10.

Forf. of lands

Tenant for yeares.

T. for life.

T. in tayle,

25 As he that is attainted of Treaſon or Felonie, ſhal loſe his goods, debts and rights, ſo alſo ſhall he forfeit his leaſes for terme of yeares of lands, the lands which he holdeth by extent of Statuts, Recogniſances, or Iudgements, his leaſes for the terme of his owne or an other perſons life of lands. And becauſe tenant in taile is in diuers reſpects but tenant for the terme of his owne life, of his lands intailed, therefore if he commit petit Treaſon, or Felonie, he ſhall forfeit his ſaid intailed lands, but for terme of his owne life. And he that hath land in an others right, ſhal forfeit for high Treaſon, petit Treaſon, Murder, or other felony, no longer or greater eſtate than he hath in the ſame lands: as a man ſeiſed in the right of his wife of lands, or in the right of his church, ſhall forfeit no further eſtate in the ſame lands, but during his owne eſtate therein: as it doth apppeare not onely by the rules of the common lawes, but the ſame is alſo confirmed by the Statute of 5.Ed.6.11. hereafter rehearſed.

T in the right of his wife, or church.

Fitz Forf. 13.

The forf of lands in tayle.

26 By the common law Tenant in taile being attainted of high Treaſon, ſhould haue forfeited the lands whereof he was ſo ſeiſed of an eſtate in tayle, but onely for the terme of his owne life, and the ſame, after his death, ſhould haue diſcended to his heire: But now by the Statute made Anno 26.H.8. and Anno 5.Ed.6. it is ordained, That euerie offendor and offendors, being hereafter lawfully conuict of any manner of high Treaſon, by preſentment, confeſſion, verdict, or Proces of Outlawrie, according to the due courſe and cuſtome of the lawes of this Realme, ſhall loſe and forfeit to the King, his heires and ſucceſſors, all ſuch lands, tenements, and hereditaments, which any ſuch offendor or offendors ſhal haue of any eſtate of inheritance, in his own right, in vſe, or poſſeſſion, by any right, title, or meanes within this realme of England, or elſewhere within any the Kings dominions, at the time of any ſuch Treaſons committed, or at any time after: As if the King giue land to the huſband and wife, and the heires males of their two bodies lawfully begotten, the remainder thereof to the heires males of the bodie of the huſband lawfully begotten, reſeruing the reuerſion to himſelfe: and the huſband and wife haue iſſue a ſonne, and the huſband committeth high Treaſon, is attainted thereof, and executed; and this attainder is confirmed by Act of Parliament, and all the offendors lands be giuen to the King: Sauing to all Strangers their right, other than to the Donor in Tayle, and his heirs: In this caſe, after the death of the wife, the King ſhall haue the land: for that by reaſon of the fathers attainder of Treaſon the eſtate Taile was forfeyted and extinguiſhed by force of the ſaid Statutes of Añ 26.H.8. and Añ 5.Ed.6. & the bloud corrupt, and the heire diſabled, for that in his lineall conueyance of his diſcent to the land, he muſt derine himſelfe heire as well to his father as his mother. And in like ſort if a man ſeiſed of lands in fée ſimple, maketh a feoffement thereof St.26.H.8. 16. St 5.Ed 6.11

16.Eliz. Dyer 332.

In eſtate taile forfeited and extinguiſhed.

Br. Done 61. Co.li.1.107.

thereof to certaine persons to the vse of his wife for the terme of her life, the remainder thereof to the vse of the heires of his owne bodie lawfully begotten, and after the feoffor hath issue a sonne, and is attainted of high Treason, and executed: In this case his sonne shall not inherite this land as heire to his father, whose bloud was corrupt by his attainder, but the land shall be forfeited to the king by the forelaid Statute of 26.H.8. And as Tenant in taile by committing of high Treason shall by force of the forelaid Statutes of 26.H.8. and 5.Ed.6. forfeit those lands whereof he hath the possession, reuersion, or remainder in taile: so shall he likewise forfeit to the king by committing of high Treason, those lands whereunto he hath but a right in taile. As if the King giue lands to a man, and to the heires males of his bodie lawfully begotten, reseruing the reuersion to himselfe, & the tenant in taile hath issue a sonne, & dyeth, and the sonne doth enter and make a feoffement in fee to a stranger of the same land, and then hath issue a sonne, and committeth high Treason, and is attainted therof, this land shall be forfeited to the King: for by this feoffement made by Tenant in taile to a stranger, there passed none other estate from the same tenant in taile, but only an estate for the terme of his owne life, and so the taile, and the right of the tayle remained in the tenant in taile, and by his attainder the estate in tayle is extinguished in the Kings reuersion in fee simple. And the King shall be said rather to haue this land reuerted vnto him, as if all the issue of Tenant in tayle were dead, than by forfeiture: for the words of the statute of 26.H.8. be, All persons attainted of Treason, shall lose and forfeit to the King, his heires and successors, all lands and tenements which such offendor shall haue of any estate of inheritance at the time of the Treason committed, or at any time after: Sauing to all others, and their heires, (other than the offendors in Treason, their heires & successors) all their rights and possessions, &c. which they had at the day of the Treason committed, or after. And by these generall words, That they shall lose and forfeit all lands & tenements, which they haue of any estate of inheritance, and by excluding the heire in the Sauing, lands tayled shall be forfeited: and the lands in this case cannot be aptly termed to be forfeited to the King, and his heires, where he had the fee simple before, but are rather to be said reuerted to the King, the Tenant in tayle dying without any issue, which, by his attainder of Treason, and the corruption of his blod, could inherit this land. And if the King by his letters patents vnder the great Seale doe creat an Earle, and giue him the title and honour of an Earledome, to him and the heires males of his bodie begotten, and the graunte hath issue two sonnes by seuerall women, and then dyeth, and his eldest sonne doth inioy the same Earledome, and after committeth Treason, by leuying of warre in the Realme against the King, and is attainted thereof, and then dyeth without issue of his bodie begotten: by this attainder the same shall be forf. to the King, and not discend to the brother of the halfe blod, nor to his heires: for the Earledome & name of dignitie may be intailed according to the statute of Westm̃ 2. de Donis conditionalibus, for that it concerneth land, and must be supported & maintained with land to vphold the countenance and charge of the owner thereof: And therefore this Earledome being by the king giuen to the Earle, & the heires males of his bodie begotten, is an inheritance which may discend from one heire male to an other, and then by the speciall words of the before rehearsed Statute of 26.H.8. and 5.E.6. it shall be forfeited to the King by the said heires attainder of high Treason: for it was in the same heire an hereditament, and whereof he had an estate of inheritance. And moreouer, when the King at the first did giue to this Earle, & the heires males

Plo Com. 547.

Forf. of a right in tayle.

Coll. 7.33.

Forf. of name or title of dignitie intayled.

St. 13.E.1.1.

of his body begotten, the foresaid great title of honor, though there was no condition expressed in the same graunt, yet there was a secret condition implied therein, viz, that the said graunté, and the heires males of his body should be assistant and seruiceable to the King his heires and successors by his Counsell in the time of peace, and by his force and prowesse in the time of war: Therefore when the heire male of this Earle the first graunté did take Councell to breake the peace of the King, and leuied warres and imployed his force and power against him, he first brake the same secret condition, which was annexed to his ancestors graunt of the Earledome: and so there is reason and cause why his sayd title of honor depending vpon the same condition should therewith cease and determine, & that the same should returne againe to the Crown from whence it was deriued.

The forfeiture of lands in fée simple.

27 Besides the forfeitures aforesaid, euery person that is attainted of high treason, petit treason, or felonie, shall also forfeit his lands in fée simple, which hée hath in his owne right, in vse, or possession: sauing that the attainder of treason by force of the statute of an. 5. El. 1. (ordained against the maintaining of the authoritie of the Bishops and Sea of Rome) shall not extend to make any corruption of blood, the disheritance of any heire, forfeiture of any dower, nor to prejudice the right or title of any person, other than the offendor or offendors, during his or their naturall liues onely. And sauing that the attainder of treason, by force of the Statute of An. 5. Eliz. 11. (prouided against the clipping, washing, filing, or rounding of mony, maketh no corruption of blood in the heire, or forfeiture of dower in the wife. And sauing that the attainder of treason by force of the Statute established An. 18. El. 1. (against impairing, diminishing, falsifying, scaling, or lightning of money) maketh no corruption of blood, nor the wife to lose her dower: for he that is attainted of that treason shall suffer death, and forfeit all his goods, and chattels to the King, and all his lands during his life onely. And likewise sauing that the attainder of felony by force of the Statute made An. 1. Iac. 12. (against coniuration, witchcraft, enchantment, charme, and sorceries) maketh no corruption of blood, nor the forfeiture of the heires or successors inheritance of any land, nor of the wiues title of dower. And further sauing that the attainder of felonie by force of the Statute prouided Anno 1. M. 12. against vnlawfull assemblies, maketh no corruption of blood. And moreouer, sauing that the attainder of felonie by force of the Statute ordained Anno 5. Eliz. 14. against the forging of Euidences, and writings, maketh no corruption of blood, nor forfeiture of land or dower. And furthermore sauing that the attinder of felonie by force of the Statute of Anno 31. Eliz. 4. (prouided against the imbeseling of the Queenes ordnance, armour, or artillery) maketh the offender to forfeit no lands, tenements, or hereditaments, any longer than during his life, no corruption of blood, nor the wife to forfeit her dower. And the same law is, if an Englishman doe commit any felonie in Scotland. And if a man haue an annuitie to him and his heires, and he doe commit high treason, and is attainted thereof, he shall forfeit to the King the same annuitie by force of the before recited Statute of Anno 26. H. 8. 13. for that the same annuitie is an inheritance.

30. H. 6. 5.
St. 5. El. 1.
St. 5. El. 11.
St. 18 El. 1.
St. 1. Iac. 12.
St. 1. M. 12.
St. 5. El. 14.
St. 31. El. 4.

The forfeiture of an Annuitie.

St. 4. Iac. 1. 8. Triall by the Country 10. Co. li. 7. 34. 8. Br. 56.

Forfeiting of a title to land.

28 He that is attainted of high treason, petit treason, or felonie, shall also forfeit such lands whereof he hath neither possession, reuersion, or remainder, but onely a title, or right, or cause of action: As if a man be disseised of lands,

and

Mo.lib.3.10. and then the diſſeiſée committeth high treaſon, after an office found thereof, the king may ſeiſe thoſe lands as forfeited and eſcheated vnto him, in reſpect of the ſame perſons attainder of treaſon. And if the diſſeiſée be attainted of petit treaſon, or felonie, the Lord of the fée, of whom the ſame lands be holden, may enter into the ſame lands, as eſcheated vnto him, in reſpect of the attainder of his lawful tenant. But the Lord cannot haue a writ of eſcheat, or other action to recouer the ſame land, becauſe his tenant died not, or was not ſeiſed thereof, but his onely remedie is to enter. And if a man make a leaſe for the terme of life of his land, and after committeth felonie, and then the tenant for the terme of life dieth, the Lord may enter, but cannot haue a writ of Eſcheat.

8.H.7.9.

49.H.6.14 29 As he that is attainted of treaſon, or felony, ſhall forfeit his lands, ſo ſhall the Lord to whom thoſe lands be forfeited, haue the euidence of the ſame lands, as eſcheated or forfeited vnto him, to maintaine his title in the ſame lands eſcheated, and to proue how his late tenant came by and held the ſame lands. Forfeiting of euidence.

Sta.9.H.3.29 30 Though it is ordained by the Statute of Magna Charta, That iuſtice ſhall not be ſold, deferred, or denied to no man: neither ſhall any man be condemned, but by lawfull triall: and that it be further eſtabliſhed by the Statute of Anno 5.Ed.3. That no man ſhall be attached nor foreiudged of life, lands, or goods, againſt the forme of the great Charter, and the Law of the Realme: So that the Law of the Realme doth allow to euery man that is an offendor, his anſwer and lawfull triall, be his crime ſuppoſed to be neuer ſo great, and the proofe thereof neuer ſo manifeſt. But if a man that is arreſted of treaſon, or felonie, or being vehemently ſuſpected to haue committed treaſon or felonie, is attempted to be arreſted, be ſo wilfull, ſtubborne, or rebellious, that he will not yéeld to be iuſtified and tried by the Law, but will either kill himſelfe, or giue cauſe to other men to ſlay him, for reſiſting and not ſubmitting his obedience to the law, then he ſhall forfeit his goods, ſo that this offence be found and preſented by twelue men before the Coroner, or ſome Iuſtices after his death: for in this caſe the default is in the offendor, and not in the Law, that he came not to lawfull triall of his offence; for the Law requireth no more, but that the ſuppoſed offendor ſhall be ſafely kept ſub cuſtodia legis, by impriſonment or mainprize, vntill it be tried whether he be an offendor or not. But though the perſon thus ſlaine, ſhall for his diſobedience forfeit his goods, being not attainted either of treaſon or felonie, yet in the like caſe, he ſhall not forfeit his lands if he be ſlaine in arreſting or after arreſt, or otherwiſe die before he be attainted, as it appeareth by the ſtatute of Anno 34.Ed.3.12. which hath eſtabliſhed, That for forfeitures of dead perſons not attainted, nor adiudged in their liues, their heires and land-tenants ſhall not be impeached, or challenged, nor of anie other forfeiture, except the forfeitures in old time adiudged, after the death of the perſons by preſentment in Eyre, or in the kings Bench, or of felons of themſelues, or others. And yet ſome do affirme, if a man doe leuie warre, or open rebellion againſt the king, or is aſſiſtant to his enemies in the field, and then is ſlaine in battell, hee ſhall forfeit his lands and goods: And others do adde thereunto, that the ſame his treaſon and maner of death, muſt alſo after his death be found by a Iurie ſuper viſum corporis, before the chiefe Iuſtice of England, being the ſouereigne Coroner of the realm, and he muſt returne it into the kings Bench, and make a record thereof, and then that perſon ſhall forfeit his lands and goodes. And vpon thoſe words of the Forfeiture without attainder.

Fitz.cor.289, 290.312. 3.Ed.5.

St.34.E.3.12.

Co.lib.4.57 Plo.com.262 263.

the ſaid Statute of 34.E.3. viz. (Except the forfeitures in old time adiudged after the death of the perſons by preſentment in Eire, or in the kings Bench, or &c.) ſome doe inferre, that if a preſentment in Eire, or in the kings Bench, be made of ſuch an open rebellion, and battell thereupon foughten, and of thoſe that manifeſtly ſhewing themſelues to be open enemies or rebels to the king, were ſlaine therein, that by the words of the ſame Statute, they ſhall forfeit their lands. But if a man be arreſted for counterfeiting the kings great or priuy Seale, for forging of his money, or for a priuy conſpiracy of the death of the king, or &c. and is ſlaine in reſiſting the ſaid arreſt, or for a reſcous attempted before or after the ſaid arreſt, he ſhall forfeit his goodes, but not his lands. And if he be arreſted for anie of the ſaid offences, and committed to priſon for the ſame, and after doth die in priſon before he be attainted of anie of the ſaid offences, he ſhall neither forfeit lands nor goodes, though he be taken with the manoure, viz. found hand hauing, and backe bearing: for though it is a miſchiefe that a man committing high treaſon, ſhall forfeit neither life, lands, or goods, yet the Law doth rather beare with that miſchiefe, than to ſuffer ſuch an inconuenience, that a man onely accuſed, or but only a ſuppoſed offendor, ſhould be attainted, and forfeit his lands and goods, where being preuented by death, viz. by the hand of God, he can not come to anſwer, and defend himſelfe, and by that meanes cannot be condemned by ſuch lawfull triall which is meant and ſpecified in the before rehearſed ſtatute of Magna Charta: But for the auoyding of queſtion & doubt in the caſe aforeſaid, they which haue beene knowne parties to ſuch open and manifeſt rebellions, haue beene of late yeares attainted by Act of Parliament, and their lands and goods giuen as forfeit to the king: as it appeareth by the Statute of Anno 29.H.6.13.Eli. 29. Eli. 35. Eli. 3. Iac.

St.29.H.6.1. Sta. 13.Eli.1. Sta. 29.Eli. 2. Sta.35.Eliz.5. St.3.Iac.2.

The forfeture of the yeare, day, and waſt.

31 There is an other forfeiture beſides the loſſe of life, lands, annuities, and goods, wherewith the Law hath deuiſed to puniſh thoſe that doe commit petit treaſon, or felonie, and be attainted thereof, which is called in Latine the forfeiture of Diem, annum, & vaſtum, the forfeiture of the yere, day, and waſt, which is executed vpon the houſes and lands of the offendor, that be holden of any other, ſauing of the king: That is, the felons houſes and lands ſhall be ſeiſed into the kings hands, where they ſhall remaine by the ſpace of a yeare, and day, and then the houſes ſhall be throwne downe to the ground, the trées ſhall be pulled vp by the rots, the medows ſhall be plowed vp, and all things which the felon did build or plant, ſhall be caſt downe, digged vp, and ſupplanted: Which puniſhment was ordained in deſpight of offendors, and to ſhew to others, how much the Law doth deteſt murderers, committers of burglarie, robberie, and other felonies, and as much as may be to terrifie and diſcourage others to attempt or practiſe the like.

Fitz.cor.290, 310, 327

Fitz.cor.358.

32 It appeareth by Bracton, that by the common Lawe the King ſhould haue had but onely the waſt of a Felons lands, viz. the benefit to pull downe his houſes, rot vp his trées, plow vp his medowes, and ſuch other commodities, as hée could haue raiſed by ſpoyling and waſting of the felons houſes, trées, & lands, and that then the land ſo waſted ſhould haue bin preſently deliuered to the Lord of the fée of whom the ſame lands were holden, which waſt and ſpoile was then made without redemption. And after by a compoſition made betweene the King and the Lords, it was agréed, That the King ſhould haue the benefit of the felons lands a yéere and a day, to redéeme the ſpoile and waſt

waſt which he might make of the ſaid felons lands. And the kings graunt by the great Charter made Anno 9. H. 3. tendeth to the ſame effect, viz. We will not hold the lands of thoſe that be conuict of felonie, but a yeare and a day, and then they ſhalbe deliuered to the Lords of the fées. And ſo it ſéemeth, that king Henry the third, and king Edward the firſt, did hold themſelues ſatisfied with the yeare and day of the felons lands, without taking the waſt thereof. But after Anno 17. Ed. 2. the Kings prerogatiues royall being erpreſſed, or enacted by Parliament, amongſt others it is ordained, That the King ſhall haue all the goodes of felons which be condemned, and which be fugitiue, whereſoeuer they be found: And if they haue any freehold, it ſhall be forthwith ſeiſed into the Kings hands, and the King ſhall haue the profits thereof by the ſpace of a yeare and a day, and the land ſhall be waſted and deſtroyed in the houſes, woods, and gardens, and in all things belonging to the ſame (except men of certaine places priuileged.) And after the King hath had the yeare, day, and waſt, the land ſhall be reſtored to the chiefe Lord of the ſame fée, vnleſſe that before he redéeme the ſame yeare, day, and waſt, of the king, by the payment of a fine. But there is a cuſtome in the Countie of Glouceſter, that after a yeare and a day the lands and tenements of felons in that Shire, ſhall reuert and be reſtored to the nert heire to whom they ought to haue diſcended, if the felony had not béene committed. And in Kent in Gauelkind, the father to the bough, the ſonne to the plough, there all the heires males ſhall diuide their inheritance, and likewiſe women: but women ſhall not make partition with men.

St. 9. H. 4. 3. 22.

St. 17. E. 2. 16

By what meanes the king came by the yeare, day, and waſt.

33 By force of which ſtatute of Prærogatiua Regis, euer ſithence that time the king hath had all the three things aforeſaid, viz. the yeare, the day, and the waſt of the lands of him which was attainted of felonie, as one of the prerogatiues annexed to the Crowne, in all caſes where the felon had ſuch an eſtate in his land, that hée might forfeit the ſame after his death, and that he himſelfe might lawfully haue made waſt in the ſame, without being impeached therefore. And therefore if the felon be but tenant for the terme of life, or for the terme of yeares of lands, the king ſhall not haue the yéare, day, and waſt of them, after the felons death, for then he might waſt an other mans inheritãce. But if a man that is ſeiſed of lands in the right of his wife, do commit felonie, and is attainted thereof, the king ſhall haue the profits of the land during the husbands life, if the wife do liue ſo long. And ſome doe affirme, that the king ſhall haue the yeare, day, and waſt of the ſaid wiues lands, after the felons death, becauſe the felon during his life might haue committed waſt therein, and for that the felon had ſuch an eſtate in his wiues lands, that by the common Lawe he might in his life haue made alienation of them, and driuen his wife to her Cui in vita, to haue recouered them. But that ſéemeth to be helped (if any ſuch law were before) by the Statute of Anno 32. H. 8. where it is ordained, That no fine, feoffement, or other act, made, ſuffered, or done by the husband onely, of any lands, tenements, or other hereditaments, being the inheritance or freehold of his wife, during the couerture betwéene them, ſhall in any wiſe be, or make any diſcontinuance thereof, or be preiudiciall or hurtfull to the ſaid wife, or her heires, or to ſuch as ſhall haue title, intereſt, or right to the ſame, by the death of ſuch wife: But the ſame wife, or her heires, and ſuch other to whom ſuch right ſhall appertaine after her deceaſe, ſhal and may then lawfully enter into ſuch lands &c. according to their rights and titles therein, notwithſtanding ſuch fine, feoffement, or other act (fines leuied by the husband and

Brack. de conſuet. cap. 13.

Fitz. Cor. 329

St. 32. H. 8. 28

The yere, day, and waſt of lands, of what title, ſhall be forfeited.

and wife, whereunto the ſaid wife is partie and priuie, only except.) By which Statute the wife after the death of her huſband, may enter into her owne land, notwithſtanding anie attainder, forfeiture, or other act done by her huſband.

No yere, day, and waſt of lands holden by ioynt purchaſe.

34 A man ſeiſed of land in fée ſimple, holden of a common perſon, did infeoffe thereof the huſband and wife, and their heires, the huſband committed felonie, and was attainted thereof, the king ſeiſed the lands into his hands, for his yére, day, and waſt, and after the kings ſaid terme expired, the Lord of the fée of whom the ſame land was holden, did ſue in the Chauncerie to haue the ſame land reſtored to him, to whom, by warrant, the Eſcheator did deliuer the ſame land, vpon whoſe poſſeſſion the wife of the felon attainted did enter, and the ſaid Lord of the fée reentred vpon her, whereupon the ſaid woman brought an Aſſiſe againſt the ſaid Lord, and recouered the land: Becauſe the fée ſimple of the ſame land being in the wife, by reaſon of the ioynt purchaſe with her huſband, the king ought not to haue had the yeare and day after the felons death, nor the Lord of the fée the land after by Eſcheat. 4. Ed. 3. 47.

Tenant in taile.

35 If tenant in taile generall or ſpeciall, or tenant in franke marriage of land, doe commit petit treaſon, or felonie, and is attainted thereof, and executed, the king after his death ſhall neither haue the yeare, day, or waſt in the felons land; nor the Lord of the fée ſhall haue the land by Eſcheat, but after the felons death the ſame land ſhall deſcend, reuert, or remaine ſecundum formam doni, to the next heire in taile of the felon, or to him in the reuerſion or remainder thereof: for in this caſe the felon was in effect but tenant for the terme of his owne life, and thereby could not forfeit a greater eſtate in his land, than that which he had. And in like ſort if he that hath land by freſh diſſeiſin, or is tenant in fée farme of land, vpon condition to pay the vttermoſt yearely value thereof, or hath land in Mortgage, to be redéemed by the Mortgager, vpon condition of payment of money, or other condition, doth commit petit treaſon, or felonie, and is attainted thereof, the king ſhall not haue the yeare, day, and waſt, for that would tend to the preiudice of others, not partie to the offence, who haue, or may haue a better right and title to the ſame lands than the felon attainted.

A diſſeiſor. Tenant in fée farme. A mortgagée.

Tenant in ancient demeſne.

36 If a man that is owner of land in antient demeſne, which he may ſell without conſent of the Lord, do commit petit treaſon or felonie, and is attainted thereof, the king ſhall haue the yére, day, and waſt, notwithſtanding that he hath vſed to ſurrender the land into the Lords hands by a rod in the Court, vpon euery alienation thereof. But if he be owner of the land in auntient demeſne of a baſe tenure, it is otherwiſe. Fitz. Cor. 310.

The yere, day, & waſt without attainder.

37 A man that toke a Church for felonie eſcaped, and the towne purſued, and killed him, becauſe he would not yéeld himſelfe; and this matter was preſented before the Juſtices in Eyre, and they adiudged, that his goodes, and the profits of his lands, ſhould be forfeited to the king, from the time of his flying vntill the preſentment; and alſo that the king ſhould haue the yére, day, and waſt. But this land ſhall not come to the Lord of the fée by Eſcheat, becauſe he was not attainted of felonie. Fitz. Cor. 298. 8. Ed. 308

38 The king ſhall not haue the yére, day, and waſt of the lands of a clerke conuict, Fitz. Cor. 333

conuict, neither shall the Lord of the fee haue the forfeiture thereof, for that the offendor is not attainted, but only conuict of felonie. And if the land of the felon attainted, be but of the yerely value of three or foure shillings, or of so small value, that it will cost more to obtaine it by suit out of the Kings hands than it is worth, then the king shall not haue the yere, day, and waste thereof. The yere, day and waste of a clerke conuict. Land of small value. Fitz. Cor. 327

St. 37. H. 8. 16 39 The words of the foresaid stat. of Prærogatiua Regis be (If they haue any freehold, it shalbe presently seised into the kings hands) This word presently, ought to be intended immediatly after the Office found, and not before: And therefore if an Office of that land be not found vntill it be many yeares after the felons attainder, yet from the time of the Office found, vntill a yeare and a day after, the king shall haue the felons lands. And also the king shall haue the profit of the felons lands, from the time of his attainder, vntill the Office be found thereof, though it be twentie yeares betweene the Attainder and the Office: for the heire of the felon can not haue it in respect of the corruption of blood: And the Lord must not haue it by Escheate, vntill the king be intituled vnto it by Office, and vntill one yeare and a day after, and vntill the king hath waited it, vnlesse the Lord doth agree with the king in the meane time, for the saide yeare, day, and waste. And moreouer, the Lord cannot at any time enter into the same land as escheated vnto him, vntill he hath sued a writ to haue it deliuered vnto him out of the kings hands: for after a writ is awarded to find the land of him that is attainted of felonie, an other writ shalbe directed, to inquire if the king hath had the yeare, day, & waste: and that being found, the Lord shall haue the land out of the kings hands, and not before: because though the attainder of the felon was found, and that the king ought to haue had the yere, day, and waste, yet it may be that the king neuer had the profit thereof, but was interrupted by some person, or by some casuall meanes. When the king shal haue the felōs yere, day, and waste. 49. Ed. 3. 11. Fitz. N. B. fol. 144. Fit. Trauer. 48 4. Ed. 3. 47. Regist. fo. 165

Fitz. Cor. 320 40 This commoditie to the king, and forfeiture of the felon, of the yeare, day, and waste, is such a benefit to the king, and so firmely and highly annexed to the Crowne, that it cannot be seuered from it, or granted to any other: neither can anie person claime it by colour of any franchise or libertie. But after the king is intituled vnto it by Office, he may grant or commit the land to an other during the yeare and day, and also giue him authoritie to take the benefit of the waste. The yere, day, and waste, not grantable frō the Crowne.

41 The words of the foresaid Statute of Prærogatiua Regis be (The king shall haue all the goods of felons which be condemned, and which be fugitiue) which is as much to say, as he shall haue all their goods, mouable and vnmouable: for the king shal haue the corne growing vpon the land of the felon attainted, and the issues & profits of the land, which he hath in his owne right, or in the right of his wife, during the time of his life, or vntil he doth purchase his pardon. But touching the profit of fugitiues lands, there is a difference betweene a flying presented before the Coroner, and a flying found by verdict vpon an acquitall: for vpon a flying presented before the Coroner, he shall forfeit the profits of his lands, vntill his death, or vntill he be acquit, or vntill he hath purchased the kings pardon: but vpon a flying found by verdict, vpon acquitall, he shall forfeit no issues of his lands, for by his acquitall the land is discharged, and consequently the issues thereof. What goods of felons the king shal haue Forfeiture vpon flying. Fitz. cor. 396. 344.

42 The

From what time forfeiture of land shall haue relation.

42 The Lawe hath restrained offendors in treason and felonie to certaine times, to make alienation of their lands and goods, and hath prefixed limits whereunto the forfeiture of their said lands and goods shall haue relation; and yet with this difference, That as sone as any treason or felonie is committed, the offendor therein is restrained to make any alienation of his lands, for then it is not his land, but by the committing of the Treason or Felonie, he hath forfeited all the estate which he had therein. And therefore, if betweene the time of the committing of the Treason or Felony, and of the offendors attainder thereof, the offendor doth make any alienation or assurance of his land, after the time that the offendor shall be attainted for the same Treason or Felonie, the said assurance shall be void, whether the same attainder be by verdict, confession, or outlawrie: for the forfeiture of the land shall haue relation from the time of the offence committed. Plo. com 263. 30. i 65. Bracton Fitz Forf. 30. Bract. li. 2. 13

From what time the forfeiture of goodes shall haue relation.

43 The forfeiture of goods and chattels shall not take backe so farre as forfeiture of lands, nor shall haue relation from the time of the Treason or Felonie committed, but from the time of the Attainder of the Treason, or Felonie. And therefore if one doe commit Treason or Felonie, and in the meane time betweene the Treason or Felonie committed, and the offendors attainder thereof, the offendor doth giue away his goodes, this is a good gift, for as yet they be not forfeit, but be his owne to maintaine himselfe and his familie, vntill he be attainted of Treason, or Felonie, and by the Law adiudged not worthie to possesse or enioy goods, nor to haue sustenance. And therefore, if vpon a fugam fecit presented before the Coroner, one do forfeit his goods, he shall not forfeit those goods that he had at the time of the felony committed, but he shall onely forfeit those goods which he had at that day, when the fugam fecit was presented against him. And in like sort, if one that is indicted of felonie be acquit thereof by verdict, & in their verdict the Iury do find, that the prisoner did flie for the Felony, in this case the same prisoner shall forfeit those goods which he had the day of the verdict giuen, and not anie goodes which he had before. And so it is, if one be conuict by verdict, the goodes shall be forfeited which the offendor had the day of the verdict giuen, and not those which hee had before. And hee that is outlawed of treason or felony, shall forfeit those goods which he hath at the time of the Exigent awarded, and not those which he had before, and hath aliened. But if a man doe commit a Treason or Felonie, and is arrested thereof, and as hee is in carrying to a Iustice of Peace to be examined, or to the Gaole by the Constables, or others, doe breake away, or in making of rescous or resistance is slaine by those which doe so carry him, because hee will not yeelde, and be iustified by the Lawe: in this case those goods shall be forfeited, which he had at the time of the felonie committed. And so it is, if one commit a felonie, and when the Sherife, Coroner, Constable, or others do attempt to apprehend him, he is slaine because he doth resist, and will not yeeld to be arrested, the goods shall be forfeited which he hath at the time of the felonie committed. Fitz. Cor. 296. 7. H. 4. 41. Fitz. Cor. 296

44 It appeareth by the statute of 3. Ed. 1. intituled Officium Coronatoris, That if any person be found guilty before the Coroner of the death of another, presently the Coroner shall goe to his house, and inquire what cattell he hath, and what corne he hath in his grange, and what on the ground, and if hee be a freeman, what land he hath, and how much it is worth by the yeare: and when they haue so inquired of all things, they shall cause the land, the corne, and cattell Stat. 3. Ed. 1.

tell to bee priced, as if they should be forthwith sold, and immediatly they shall be deliuered to the whole Towne, to answer for the same before the Iustices.
22.Ass.p.96. And in like sort, when it is found before the Coroner, that one did flye for a Felony, the Shirife shall presently seize his lands into the K. hands, by word, without Enquest, and also shall seise all his goods into the Kings hands, and shall appraise them by an Enquest (as well of Villaines as of Freemen) and the prices shalbe inrolled in the Coroners Roll, and deliuered to the Towne, to answer to the King for the same: for by that which is found before the Coroner, the goods be forfeited, without further inquiry. And so may another
43.E.3.24. Officer of the Kings seize the goods of a Felon before attainder, and if the felon doth find surety, the Officer must leaue them in his custody. But whether he doth find surety, or not, the Officer ought not to carry them away, but must leaue them in the custodie of the Felons neighbours: For if one be indicted of
7.H.4.41. Felony, his goods shall not be remoued forth of his house vntil he be attainted, but shall be kept by his neighbours all the time of his imprisonment, and the
Registrum. Felon shalbe maintained with them. And according thereunto there is a writ in the Register, viz. Quod tenementa & bona taliter capta, videantur & imbreuiantur, & saluo custodiantur per balliuum ipsius capti, qui securitatem Regi inuenient ei respondendi, si &c. saluis inde ipsi capto & familiæ suæ necessarijs quamdiu fuerit in prisona. By which writ it doth appeare, & also by the assertions of Bracton and Britton, that one which is indicted or imprisoned for felony, shall not be put out of the possession of his goods, vntill he be conuict of felony, but he must haue reasonable maintenance of his goods for him and his family, vntil he be conuict, and then that which doth remaine shall be the Kings. And yet the felon must not disorderly sell or waste his goods: and so this difference is to be obserued in seising of a Felons goods, viz. where the goods be forfeited before the felony tried, and where they be not forfeited vntill the felony tried: For if they be forfeited before the felony tried, they shall be presently seised vpon the forfeiture of them, though there be no conuiction of felony (as in the foresaid cases, where one is found guilty before the Coroner of the death of another, or where it is found before the Coroner, that one did flie for a felony:) But if they be not forfeited vntil the felony tried, then they shal not be seised, vntil the Felon be conuicted.

The goods of a prisoner shall not be seised vntill he be attainted.

45 And because that diuers persons were often arrested and imprisoned for suspition of Felony, sometime of malice, and sometime of light suspition, and were kept in prison without baile or mainprise; and for that sometime Shirifes, Escheators, Bayliffes of Liberties, and others, did seise and take away the goods of some person arrested or imprisoned for Felony, before the same person was conuict or attainted of the same felony, contrary to the common law: therefore partly to confirme the common law, & partly to giue to the party grieued a more ample recompence for his wrong receiued then the common law before did, viz. to giue him the double value of his goods so taken or seised, where the
34.E.3.2. common law gaue him the single value, and partly to giue him a speedy remedy to recouer the same, there was a statute made Anno R.3. by the which it is ordained, That no Shirife, Vndershirife, Escheator, Bayliffe of Franchise, or other person, shall take or seise the goods of any person arrested or imprisoned, before the same person or persons so arrested or imprisoned be conuict or attainted of such felony, according to the law of England: or otherwise that the same goods be in some manner lawfully forfeited, vpon paine to lose the double value of the goods so taken, to him or them which be endamaged thereby, by action

of Debt in this behalfe to be purſued, by like proces, iudgement, and execution, as is commonly vſed in other actions of Debt purſued at the common law, wherein no wager of law, eſſoine, or protection ſhall be allowed: This ſtatute of 1. R. 3. extendeth only to thoſe that be arreſted or impriſoned: for notwithſtanding this ſtatute, the ſherife may ſeiſe the goods of them which be at liberty and indicted of felony, at the ſecond Capias, by force of the ſtatute of 25. E. 3. as it appeareth Appeales 59. St. 25. E. 3. 14.

Who ſhal haue the cuſtody of felons goods forfeited.

46 The cuſtody of the goods of thoſe which be conuict of Felony, or which be Fugitiues, after they be forfeited, doth belong to the Towne where the ſame goods be, or where the Felon doth dwell: and therefore vpon a fugam fecit preſented before the Coroner, the goods ought to be ſeiſed by the Sherife, and praiſed by an Enqueſt, and the appraiſement muſt be inrolled in the Coroners Roll, and the goods ſhall be deliuered to the towne, to anſwere to the king for them: and though the goods be not deliuered to the towne, yet if the goods were in the Felons poſſeſſion at the time of his conuiction, or flying, the towne ſhall anſwere for them. And ſome doe affirme, that the ſherife and the Dozeners may ſeize Felons goods into the kings hands, and the ſherife ſhall deliuer thoſe goods to the towne, to anſwere to the king at the comming of the Iuſtices in Eyre: But if neither the Sherife nor the Dozeners doe ſeize the ſame goods, yet the towne ſhall anſwere to the king for them at the comming of the Iuſtices in Eyre: For as ſone as a fugam fecit is found before the Coroner, the towne ſhall be preſently charged with the goods of him that did flye away. And though it be preſented before the Iuſtices, that a Felon was deliuered to the ſherife with the manoure, and with all his goods, yet the towne ſhall be charged with the ſaid Felons goods, though the ſame was found, and preſented with intent to eaſe or diſcharge the ſame town. And in like ſort, notwithſtanding it doth appeare by the Coroners Roll, that the goods of a Felon were deliuered to one man of the town, yet the king ſhal leuy thoſe goods of the whole towne. But when the ſherife doth come to leuy thoſe goods of the town, by the ſherifes conſent they may be leuied of him only who had them in cuſtody. One that was indicted of Felony, appeared at the Erigent, and pleaded, and was acquit, and his goods being forfeited, becauſe he did not come in before the Erigent awarded, were praiſed by the Enqueſt, which acquitted him at forty ſhillings: and the ſame Enqueſt found what towne was charged with them, which ſaid preſentment of the Enqueſt was inrolled, and it was adiudged, that the ſame towne may ſeize the ſame Felons goods in what place ſoeuer they can find them. And becauſe the towne where the Felons goods be, ſhall anſwere for them, therefore they which doe take into their poſſeſſion any of the ſame Felons goods, and other goods which do belong vnto the king as Deodands, and ſuch like, are to be amerced by the Iuſtices in eyre, if the ſame goods be not deliuered vnto them by the towne, which hath the charge of them, for that the ſame towne hath the cuſtodie of them. But by a Statute made Anno 31. Ed. 3. the towne ſhall be eaſed of this charge, if they can ſhew what other perſon hath detained thoſe goods, and that they could neuer haue poſſeſſion of them: the words of which ſtatute be: If any man or towne be charged in the Exchequer by the Eſtreats of the Iuſtices, of the goods of Fugitiues and Felons, and he will alledge in diſcharge of himſelfe, an other that is chargeable, he ſhalbe heard, and right ſhalbe done. And therfore if it be found by office before the Eſcheator, that the goods of a man attainted of Felony be in the cuſtody of ſuch a perſon: in this caſe a Scire facias ſhalbe awarded vpon 22. Aſſ. p. 96. Fitz. Cor. 366 Fitz. Forf. 32. Fitz. Cor. 300. Fitz. Cor. 182 St. 31. Ed. 33.

the

the ſame office againſt the ſaid perſon, to ſhew if he hath any thing to ſay why he ſhould not anſwer thoſe goods. But if it be found by the Enqueſt, which did attaint the felon before Juſtices of Gaole deliuerie, Juſtices of Oier and Determiner, or Juſtices of Peace, that any perſon doth detaine the goods of a Felon attainted, the ſaid Juſtices cannot award proces thereupon againſt the party, that doth detaine the ſame goods, but they muſt ſend their Eſtreats into the Exchequer, and the officers of the Exchequer wil award proces againſt the ſame party to leuy the ſame goods. And yet if he that is preſented to detaine the ſame goods, do find himſelfe grieued therewith, he cannot haue a Trauerſe in the Exchequer to that which is found by the Jury, becauſe the court of Exchequer hath not the record before them, neither can he trauerſe the ſame before the Juſt. of Gaole deliuerie, Juſtices of Oyer and Determiner, or Juſtices of peace, for that they cannot award a Superſed' to the Barons of the Exchequer to ſurceaſe their Proces. But his onely remedie in this caſe is, to procure a Certiorari to remoue the record into the Kings Bench, and there to tender his trauerſe, & auerrement, and to haue a Superſedeas from thence to the barons of the exchequer, to ſurceaſe their proces. And the ſame law is, if the like thing be found by an Enqueſt in the Kings bench, after they haue deliuered their records therof into the exchequer. And a man which was indicted for the taking of goods of one that was attainted of Treaſon, was put to the anſwer thereof: So that ſithence the ſaid ſtatute of 31. Edw. 3. others haue bene charged with felons goods, as well as townes. But the Sherife was alwaies charged with the profits of felons and fugitiues lands, according to the extent thereof, and not any towne: And ſo he was charged with goods confiſcat: as, where vpon an indictment of felony, the manoure is brought into the Court, and the party indicted doth diſclaime therein, by this diſclaimer the King ſhall haue the manoure, and the Sherife ſhalbe charged therewith. And the ſame manoure ſhal be prayſed by the Enqueſt that doth trye the felonie: and if it be found by the ſame Jurie, that it was impaired by the Conſtable, or any other who had the ſame in keeping, the Sherife ſhalbe commanded to leuie ſo much in value, as it was impaired by the ſaid Conſtable, or other. And in ſome caſes the Shirife ſhalbe charged with a felons goods, and not the town where the felon did dwel, or where his goods remained: but that muſt be by agreement betweene the ſaid Sherife and the towne.

Fitz. Cor. 390. Fitz. Cor. 355. 368. Fitz. Cor. 390. 398.

The Sherife charged with felons lands.

47 In High Treaſon the King ſhall haue the forfeiture of the offendors lands, of whom ſoeuer they be holden, and that by the common law: for the offence committed is not to any ſubiect, but to the Soueraigne gouernour himſelfe, his Crowne, and Realme, which is an offence of ſo high a nature, that it cannot bee recompenced with all that the offendor hath, and then it ſhould bee leſſe counteruailed, if any other ſhould be partaker with the King therein. And the meane Lords ſhall receiue no loſſe thereby, for they had nothing in the land but a Seigniorie out of it: And if they hold ouer of the King by the like ſeruices, then haue they loſt nothing, for that they be diſcharged of their charge and ſeruices, which they did hold by, which was as much as they receiued of the tenant perauaile: And if they held of the King by leſſe rent than their tenant perauaile held of them, they ſhall haue the ſurpluſage of that which was holden of them, of the King, by the way of petition. And if the King do not keepe the land ſo eſcheated vnto him in his hands, but will aſſure it to another, hee muſt reuiue the tenure in the Peſne Lord, to hold of them of whom it was holden before the attainder. It appeareth by the ſtatute of Prærogatiua Regis

Fitz. Aſſ. 324. Fi. Petition 19.

To whom the forf. of lands for high treaſon ſhal accrue

cap. 12. That the K. and whole Court of Parliaments meaning was at that time when it was published and established by Parliament, which were the Prerogatiues royall annexed to the crowne of England by the common Law, that of such lands as did escheat to the K. the seruice of the lord of the fee should be reserued: for the words of the statute be these, viz. The K. shall haue escheat of the lands of Normans, to whose fee soeuer they belong: Sauing the seruice appertaining to the chiefe Lords of the same fee. And King Henrie the third gaue the Escheats of Normans lands to be holden of the chiefe Lords of the fee, by Seruices and Customes due and accustomed therevnto. Some of which Normans dwelling in Normandy at that time had lands in England, and were subiects to the King of England, and did forsake their obedience to the King of England, and became subiects to the K. of Fraunce, the King of Englands enemie, and thereby did forfeit those lands which they had in England, by the common law, and they did escheat to the King. St. 17. E. 2. 12

Who shal haue the forf. in petit treason and felonie.

48 In Petit Treason, and Felony the king shal not haue the escheat of the offendors land, vnlesse it be holden immediatly of him: but the king shal haue the profits of the said offendors land by the space of a yeare and a day, and the land shalbe wasted and destroied in the houses, woods, and gardeins, and in al things belonging to the same, and then it shalbe deliuered to the chiefe Lord of the fee, of whom the same land is immediatly holden. And yet in some cases the K. shal haue the forfeiture of the land of him which doth commit petit treason, or felony, though the land be holden of others, and not of him, as it appeareth by the statute of Prærogatiua Regis, which hath ordained, That the king shal haue the escheats of lands of Archbishops and Bishops freeholders, when such tenants be attainted of felony committed in time of vacation, whilest their temporalties were in the K. hands, to bestow in what sort it shall please him: Sauing to such Prelats the seruice that to them is due and accustomed. And therfore sauing in the cases aforesaid, the meine lords of whom the lands be immediatly holden, shall haue their escheats of their freeholders lands, that haue committed petit treason or felony, which land after the K. hath had the yeare, day, and wast therof, they must haue deliuered vnto them out of the K. hands, by suing out of a writ. S. Br. 39. St. 17. E. 2. 14

The Lords remedy for lands escheated vnto him.

49 If any stranger, or other (sauing the King) doth intrude into that land whereof the felon attainted was seised at the time of the felon committed, the immediat Lord of the fee of whom the same land is holden, may enter vpon him, and put him out, or else he may haue his writ of Escheat against him: In the which writ he must rehearse the iudgement giuen against the person attainted, viz. if he were attainted by outlawrie, to allege, Eò quod prædictus A. feloniam fecit pro qua vtlagatus fuit, and if he were attainted by abiuration, to say, Pro qua regnum nostrum abiurauit, and if he were attainted by confession or verdict, to say, Pro qua suspensus fuit: and if he doe allege one of those iudgements, in the stead of another, his writ shall abate. And yet he need not rehearse the manner of the felonie in his writ, nor in his count, but generally that he committed felonie. And though there be error in the iudgement, yet the Lord shall haue a writ of Escheat, and the tenant shall not satisfie the iudgement by the error. Fi Eschet 14. Fitz. Eschet 8 Fitz. Eschet 6

The heirs remedie for land escheated to his auncestor.

50 If land escheat to the auncestor, because his tenant was attainted of felonie, and the auncestor dyeth before he doth bring his writ of Escheat, or doth enter; 45 E. 3. 4.

enter; In this case the heire may haue a writ of Escheat, and suppose that the partie attainted did hold of his ancestor.

Fi. Escheat 171

51 If a lease of land be made for the terme of life, reseruing to the lessor a rent, and the lessor payeth his seruices to the chiefe Lord, and then the lessor is attainted of felonie, and after the tenant for terme of life dyeth: In this case the lord paramount may haue a writ of escheat of the land: for the rent which was reserued vpon the lease, doth come in stead of the land, and so in the construction of law he died seised of the land. But if no rent had bene reserued, the Lord might haue entred into the land as escheated vnto him, but could not haue recouered it by a writ of Escheat, no more than if his tenant being disseised, had bin attainted of felony, in which case his only remedy is to enter.

Where the Lord shall haue his writ of Escheat, and where he may enter.

6. H. 7. 9.

52 This is the forme of the writ of Escheat. Rex vicecomiti B. salutem: Præcipe A. quod iuste & sine dilatione reddat B. decem acras terræ cum pertinentijs in N. quas C. de eo tenuit, & quæ ad ipsum B. reuerti debẽt tanquam Escaeta sua, cò quod prędict C. feloniam fecit pro qua suspẽsus fuit, vt dicitur: Vel pro qua vtlagatus fuit, vt dicitur: vel pro qua regnum abiurauit, vt dicitur. Et nisi &c, and though the indictment was executed in another maner than is rehearsed in the writ, yet the writ shall not abate, as if he were Decapitatus & non suspens⁹, for the execution of the iudgement is not material, so that he had such a iudgement, for the action is true, though the writ be not true.

The forme of a writ of Escheat.

Register f. 165

53 In al cases of felony, if the king ought to haue the escheat, he must haue an office found for him before he can enter: for vntill the office found, the king hath but a possession in law, and not in dęed, notwithstanding the death of him which is attainted. But by the stat. of añ 33. H. 8. the king shal haue the lands, goods, cattels, and all other things of the offendors attainted of high Treason, without any office: the words of which stat. be these, viz. If any person or persons shalbe attainted of high treason, by the course of the common laws, or stat. of this realm, in euery such case euery such attainder by the common law, shall be of as good strength, value, force, & effect, as if it had bin done by authority of Parliament. And the K. his heires and successors, shall haue as much aduantage by such attainder, as well of vses, rights, entries, conditions, possessions, reuersions, remainders, and all other things, as if it had bẽn don and declared by authority of parliament, and shalbe deemed and adiudged in actual and real possession of the lands, tenements, hereditaments, vses, goods, chattels, and al other things of the offendors so attainted, which his highnesse ought lawfully to haue, and which they so being attainted ought or might lawfully lose & forfeit as if the attainder had bin done by authority of parliament without any office or inquisition to be found of the same: Any law, statute &c. notwithstanding. By force of which statute the K. shalbe in actuall and reall possession of those lands which do escheat vnto him by any attainder of high treason, without any office or inquisition thereof found: though for those lands which do escheat vnto him by any attainder of felony, there must be an office found for him, before he can enter, according to the ancient course of the common law.

The K. remedie for land escheated to him.

Se. 33. H. 8. 20

An office of those lands which do escheat for felonie.

54 By the common law any man attainted of Treason or Felonie, should haue forfeited that title which his wife had by their espousals to be endowed of his lands, to the intent, that if the care of his owne life could not stay him from the committing of felony, or treason, yet the loue which he did beare to his wife

Fork of title of Dower.

and children, should restrain him therof, whom he was assured by that wicked act to vndoe, and vtterly to deprive them of all likelihood wherewith to maintaine them. And some do affirme, that this law was at the first deuised, to punish the wife, and to auoid her dower, for that it was intended, that the wife gaue consent vnto, or at the least did know of the treason, or felony, which her husband committed, and either by intreaty, persuasion, or some other means, might haue withdrawne him from it. But the common law in that case is altered by the stat. of an 1. Ed. 6. whereby it is enacted, That albeit any person or persons, of what estate, condition, or degree he or they be, shal fortune to be attainted, conuicted, or outlawed of any treason, petit treason, Misprision of treason, murder, or felony whatsoeuer, yet that notwithstanding euery woman that is, or shal fortune to be wife of the person so attainted, conuicted, or outlawed, shalbe endowable, and enabled to demaund, haue, and enioy her dower, in like maner and forme as though her husband had not bin attainted, conuicted, or outlawed: Any stat. law, custom, &c. notwithstanding. But after, some part of the foresaid stat. of an 1. E. 6. was altered by a branch of a stat. made an 5. & 6. Ed. 6. whereby it was prouided and enacted, That the wife, or wiues, whose husband, or husbands hereafter shall be attainted of any treasons whatsoeuer they be, shall in no wise be receiued to aske, challenge, demand, or haue dower of any the lands, tenements, or hereditaments of any the person or persons, to be attainted of treason, as is aforesaid, during the said attainder in his force. And yet sithence the foresaid stat. of 5. & 6. E. 6. it was specially prouided and ordained by the stat. made An. 5. El. 1. & An. 5. El. 11. & An. 18. El. 1. That the husbands attainder of treason, by force of any of the foresaid stat. should cause no forfeiture of dower in the wife. S. Br. 27.

1. & 2. P. & M. 12. — 5. & 6. E. 6. 11.

What the Appellee that wageth battell, shall forfeit.

55 If in an appeale the appellee do wage battel, and the appellant doth slay him in the field, the appellee shall forfeit all his goods & chattels, but his land shall not escheat: for inheritance is so greatly fauoured, that it shall not be forfeit without attainder by iudgement. But if the appellat do vanquish the appellee, then his land shalbe forfeit, for when he is vanquished and not killed, iudgement shall be giuen, that he shalbe hanged, and by that meanes he shall forfeit his land.

Br. Appeale. 117. — Fi. Iudg. 225. — Plo. Com 161

A rent charge pro consilio not forfeited.

56 If a man seised of land in fee, doth grant a rent charge out of the same to another for the terme of the life of the grantee, pro bono cõsilio suo impendendo, with clause of distres within the same land, if the grantee of this rent charge be attainted of treason, and committed to prison, yet hee shall not forfeit this rent charge to the K. for it is incident to the cause for the which it was giuen, viz. to the counsell to be giuen by the grantee to the grantor, which was a trust that the grantor reposed in the grantee to giue him counsell, which trust the grantee cannot assigne or forfeit to another. And though the grantee of this rent charge be attainted of treason, and imprisoned, yet the grantor may come or send to him for his counsel, and he may giue it him, & so there wil be no fault in him. But if a man doe purchase a rent charge for the time of his life, out of another mans lands, in consideration of a sum of money paid by the grantee to the grantor, & after the grantee is attainted of treason or felony, the same rent charge shall be forfeit to the King and paid to him during the life of the grantee. S. Br. 27.

6. H. 8. Dyer 8

The forfeitures of an Outlaw.

57 Out of all which foresaid forfeitures, the words of Bracton may be verified, who writeth, That a man outlawed (or otherwise attainted of Treason or felony) shal forfeit his countrey and kingdome, and shall become a banished man

Bracton de corona. 13.

man, who in English is called an Outlaw. And in former times he hath beene tearmed a Friendlesse man, and so he hath seemed to forfeit his friends: for if any man after his Outlary doth willingly feed him, receiue him, keepe company with him, or hide him, he shalbe punished in the same sort that the Outlaw shall. Also he shall forfeit all things which be peaceable, seeing that from the time he is an Outlaw, he carieth a Wolues head, so that all men may kill him without punishment, and specially if he defend himselfe, or flie away, in such sort that he may be hardly apprehended. But if he do not flie, or defend himselfe, then he that killeth a man so taken, shall answer for him, as for any other man, for that life and death be in the Kings hands, vnlesse there be a custome to the contrary, as in the Counties of Hereford and Glocester. And he shal forfeit the benefit of Law: for he which being outlawed will be so bold as to returne without the kings licence, shal die without law, or further examination in iudgement. And he cannot appeale others, for he hath lost the benefit of law, and carieth with him his iudgement vpon his head, & he can haue no defence, so long as the Outlary standeth in force. It is vpright iustice, that he shal perish without law and iudgement, who refuseth to liue according to the law. And he shall forfeit his right and possession of all things that he hath gotten, or may get. And all bonds, obligations, homages, fealties, oathes, and other contracts made with him, be dissolued, which can neuer be reuiued but vpon a new contract, though he be restored. And he shal forfeit all his tenements and hereditaments from him and his heires, and euerie action that was due to him before his Outlary, though he be after restored by the kings pardon. And Outlary of felony, and euery other iudgement of felony, doth dissolue all the gifts & sales of land that he made sithence the time of the felony committed. The outlawes goods shalbe the kings, for he cannot be outlawed in any other place, but in the Kings Court, as in the County Court, or in the Vskings of London.

Cor-

Corruption of blood.

1 BY attainder of Treason, or Felony, commeth corruption of blood, that is to say, that the offendors children cannot be heires to him that is attainted, nor to any other ancestor. And if the offendor were a nobleman, or a gentleman before, by this attainder hee is become ignoble, and not only he himselfe, but also al his children hauing respect to the Nobilitie, which they had by their birth. And this corruption of blood is so grieuous, that it cannot be saued otherwise then by the authoritie of parliament. But if the King will pardon the offendor, it will cleanse the corruption of blood of those children, which be borne after the pardon: and they which be borne after the pardon, may inherite the land which their auncestor purchased at the time of the pardon, or after; but so cannot they which were borne before the pardon. And also he that is attainted of Treason or Felony, shall not bee heire to his father, but his disabilitie shall hinder others to be heire, so that during his life, the land shall rather escheat to the lord of the fee, then discend to another. But if he that is attainted do die without issue of his body, during the life of his auncestor, then his yonger brother, sister, or cousin shall inherite: for if the eldest sonne be hanged, or doth abiure the Realme for Felony during the fathers life, it is no impediment, but that the yongest sonne may inherite. And if he which is attainted of treason, or felony in the life time of his ancestor, do purchase the Kings pardon before the death of his ancestor, yet he shall not bee heire to his said ancestor, but the land shall rather escheat to the lord of the fee. But if the eldest sonne be a Clerke conuict in the life of his father, and after his father dieth, in this case he shall inherite his fathers land, because he was not attainted of Felony, for by the common law hee should haue inherited after he had made his purgation. And now by the Statute of Anno 18. Eliz. he shall forthwith enlarged after burning in the hand, and deliuered out of prison, and not committed to the ordinary to make his purgation, and so he is in case as if he had made his purgation.

Corruption of blood saued by Parliament onely.

27. Ed. 3. 77. Fitz. Petit. 20.
Fl. Discent. 6. 26. Ass. p. 2.
29. Ass. p. 15. 13. H. 4. 8. Fi. Discent. 15.
Fitz. Cor. 382. St. 18. Eliz. 6.

2 If a man that hath land in the right of his wife, haue issue, and doth commit Felony, for the which hee is attainted, and the King doth pardon him: in this case, if the wife doe die before him, he shall not be tenant by the courtesie, for the corruption of blood of that issue. But it is otherwise, if he hath issue after the pardon, for then he shall be tenant by the courtesie, although the issue which he had before the pardon be not inheritable.

Where corruption of blood shall preiudice tenant by the courtesie.

13. H. 7. 17.

3 If

32.H.8.Dy. 48. 3 If a man ſeiſed of lands hath iſſue two ſonnes, and the eldeſt is attainted of Felony in the life of his father, and is executed for the felony, or otherwiſe dieth during the life of his father, and after the father dieth ſeiſed of the land, the land ſhall deſcend to the yongeſt ſonne, as heire to his father, if the eldeſt ſonne hath no iſſue then liuing. But if the eldeſt ſonne, that was attainted, hath any iſſue in life, which ſhould haue inherited but for the attainder, the land ſhall eſcheat to the lord, and not deſcend to the yonger brother, for that the blood of the eldeſt brother is corrupted.

The eldeſt ſon attainted of felony during his fathers life.

4 S. Forfeiture 27. That the attainder of Treaſon or Felony in certaine caſes, ſhal not extend to make any corruption of blood, the diſinheritance of any heire, forfeiture of any dower, nor to preiudice the right or title of any perſon, other then of the offendor or offendors, during his or their naturall lines only.

where an attainder, but no corruption of blood.

Re-

Reſtitution of ſtolne goods.

1 HAuing written of Robberies, and other Felonies, and declared how Felons are to be proſecuted by Arreſt, Appeale, Indictment, Arraignment, Tryall, and Iudgement, and what they ſhall forfeit, I meane now to ſhew, how true men, whoſe goods were robbed, ſtoln, or feloniouſly taken from them by ſuch Felons, ſhall be reſtored to their goods againe. As it is neceſſary for the Common wealth, that Felons ſhould be puniſhed, leaſt the impunity of ſome ſhould incourage them, and alſo allure others to commit the like offences: ſo is it fit, that they chiefely, whoſe goods were taken from them, and thereby haue taſted the ſmart, and receiued the loſſe by the Felons, and are more likely to know who they be, and where they be, then others are, ſhould doe their vttermoſt endeauor to procure thoſe Felons to be apprehended, brought to their anſwers, and to haue them puniſhed according to their demerits: that is to ſay, he that was robbed, or whoſe goods were ſtolne from him, ought preſently after the felony committed to purſue the felon ſo haſtily, that (if it be poſſible) he may take him with the manoure, and thereupon, bring his appeale againſt him, and conuince him of the Felony. And the ſayd ſpeedy and diligent purſute of his, is called Freſh ſuit, which thing being found by a Iury, the king ought to make reſtitution to the appellant of his goods contayned in the appeal, which his officer or any other to his vſe did ſeize. But if it be not found by a Iury, that the owner did make Freſh ſuit, the ſaid owner ſhall loſe his goods, and the King ſhall haue them, although the felon be conuict at the ſame parties ſuit. For as the Law doth ſo abhorre Felonies and Felons, that it puniſheth a Felon with the loſſe of his life, his lands, goods, and all that he hath: ſo doth it in ſuch ſort condemne the concealing, wincking at, or ſlacke purſute of a felon, that it puniſheth a true man with the forfeiture of his goods ſtolne from him, for omitting his duty in making freſh ſuit after, proſecuting, and purſuing to death of a knowne Felon. If the manoure wherwith the Felon is taken be portable, or otherwiſe may be conueniently done, it ought to be brought into the Court before the Iuſtices: and if it be in a cheſt, bore, cloake-bag, or male, the appellant muſt declare the goods particularly which be in it, before it be opened, or that he can haue it reſtored vnto him againe. And if the Freſh ſuit be made by the ſeruant of him that is robbed, and not by the partie himſelfe, yet it is ſufficient to procure him reſtitution of his goods. And if the Felon which committed a Robbery or other Felony be not taken by the ſpace of a yeare after the felony committed, yet if the party that was robbed, or whoſe

what is freſh ſuit.

Fitz. Cor. 379.

Fitz. Cor. 392.

Freſh ſuite by the ſeruant.

whoſe goods were ſtolne, do his indeauour, to apprehend the Felon, and make
7.H.4.43. diligent and ſpeciall inquiry for him, and after he is taken, though not at the
ſuit of the party robbed, or &c. yet that ſhall be adiudged a ſufficient Freſh ſuit,
and vpon his appeale brought, and the offendor conuicted, he ſhal haue reſtitu-
tion of his goods robbed or ſtolne.

What conuic-
tion ſhall be
ſufficient to
giue the ow-
ner reſtitution
of his goods.

2 Though in former times it was not adiudged ſufficient for the appellant
to conuict the offendor of Felony, but he muſt haue attainted him thereof, be-
fore he could haue had reſtitution of his goods: and if the Felon were in that
caſe, that he could not be attainted at the owners ſuit, hee ſhould not haue had
Fitz.Cor 315. reſtitution of his goods, but they ſhould haue bin forfeited to the king, were the
ſuit neuer ſo freſh. As, if the felon being purſued by the party robbed with hue
H.8.E.3.10. and cry, did flie to a Church, and made his abiuration: or that the Felon was
in priſon, and died before the owners appeal commenced. But now the law is
otherwiſe conſtrued: for it is thought to be a great extremity, that the party
which was robbed ſhould loſe his goods, when he hath done all that he could, &
Fitz.Cor.379. that there was no default in him. And therefore it is now agreed, that if after
380. the appeale commenced the Felon do die in priſon, or do breake the priſon, and
26 Aſſ p.32. flie to a Church, and there abiure, the Freſh ſuit ſhalbe inquired of, and if it be
Fi Forfeit. 25. found, the party robbed ſhall haue reſtitution of his goods. And in like ſort, if
8 H.4.1. the offendor will ſtand mute of malice, or challenge peremptorily aboue the
10 H.4.5. number that the law doth appoint him, or will demaund his clergy: in all theſe
caſes the Freſh ſuit ſhalbe inquired of, and if it be found, the appellant ſhall be
reſtored to his goods, and yet in theſe caſes the Felon is not attainted. But be-
cauſe the appellant hath done his indeuor, and all that is in him, to attaint the
Felon, it is reaſon that he ſhall haue reſtitution of his goods.

When the ow-
ner ſhall haue
reſtitution.

21.Ed.4.73. Fitz.Cor.392. 3 Reſtitution ſhalbe graunted and made to the owner of his goods ſtolne,
as ſone as the Felon ſhall be attainted or conuicted by his appeale, and the
Freſh ſuit ſhall be found, though the appellant doth not pray, or ſue execuci-
on of the body of the appelle: for the appellant hath proſecuted the ſuite ſo far,
that he hath brought the Felon to the Kings mercy; ſo that the appellant, nor
any other for him, can ſtay or releaſe the execution, but onely the King: and
therfore it is reaſon, that he ſhould now haue reſtitution of his goods. And ſome
do affirme, that when the appellant hath ſo farre proſecuted the appelle, that
21.Ed.4.16. he is outlawed, that the appellant ſhall haue reſtitution of his goods, without
inquiry of the Freſh ſuit, becauſe he hath purſued the ſuit againſt the offendor,
ſo far as he can. If an appeale be ſued againſt the principall and acceſſory, and
21.E.4.16. 10.H.4.5. the principall is attainted, and the freſh ſuit is found, the appellant ſhall haue
reſtitution of his goods, without ſuing againſt the acceſſory. And though hee
doe continue his ſuit againſt the acceſſory, yet that ſhall not hinder his reſti-
tution, for that he hath procured the attainder of the principall Felon: and
whether the acceſſorie bee attaint, or acquit, yet the appellant ſhall haue re-
ſtitution of his goods. And in like ſort, if an appeale be ſued againſt two as
principals, and one of them is attainted, and the other is acquited, and the
Freſh ſuit is found, the appellant ſhall haue reſtitution of his goods, for that
it doth appeare, that the appellant was robbed of his goods, and had cauſe to
ſue: for though the appeale be found falſe in part, touching him that is acquit,
yet that ſhall not preiudice the appellant, ſeeing that falſehod commeth not
of his owne declaration, but by the verdict of the Jury. If one man doe robbe
diuers men, whereupon they doe bring their ſeuerall appeales, and the Felon

is

is attainted at the suit of one of them, & that it is moreouer found that he hath made fresh suit: in this case the residue shall not haue restitution, vntill ỹ felon be found guiltie at their seuerall suites, and the fresh suit also seuerally found. 4 E.4.11.

Before whom and by whom inquirie of fresh suit is to be made.

4 Before Restitution can be awarded of Felons goods, an inquirie is to bee made of the Fresh suit before the Justices, and not before the Shirife, (though it be but an Enquest of Office) and it is to bee done by the Jury, that doth find the defendant in the appeale guilty of the Felony, vnlesse it bee in case where the defendant doth confesse the appeale of the plaintife, and then it shall be inquired by the Viſne, where the Felony was committed by the people of that County where the appeale is brought, except it bee brought in London: for London hath such a priuiledge, that they shall not bee drawne to appeare vpon Juries out of the Citie: and the Kings Justices cannot goe into the Citie and take the same by Niſi prius, because it is but an Enquest of Office: and therefore in that case they doe inquire of it by people of the County where the Felon was taken, and from thence shall the Viſne come. But first the Court is to inquire of the Defendant in the appeale, if hee doe clayme any propertie in the goods, or not, and if hee clayme nothing therein, then it must enquire, if the goods were the plaintifes at the time of the Robbery committed, & moreouer inquire of the Fresh suit. 1.H.4.5. 2.R.3.12. Fit.Forfeit.153

Restitution vpon attainder by Indictment.

5 By the common Law there was no helpe for the party robbed by indictment of the Felon to recouer his goods againe, or to haue restitution of them: for although the enquest which tried the Felon vpon his arraignment, would after they had found him guilty of the Felony, haue said, that the party robbed had made fresh suit, yet that would not haue anailed to haue procured him restitution of his goods. And therefore to redresse that enormitie, there was a Statute made Anno 21.H.8. by which it was enacted, That if any felon or Felons hereafter doe robbe or take away any money, goods, or cattels from any the Kings Subiects, from their person, or otherwise within this Realme, and thereof the said Felon or Felons be indicted, and after arraigned of the same Felony, and found guiltie thereof, or otherwise attainted by reason of euidence giuen by the party so robbed, or owner of the said mony, goods, and cattels, and that as well the Iust. of Oaole deliuery, as other Justices, before whom any such felon or felons shalbe found guilty, or otherwise attainted by reason of euidence giuen by the party so robbed, or owner, or by any other by their procurement, haue power by this act to award from time to time Writs of Restitution for the said mony, goods, or cattels, in like manner, as though any such felon or felons were attainted at the suit of the party in appeale. And so by force of this Statute the party robbed shal haue restitution of his stolen goods, vpon euidence giuen by him, or by any other by his procurement against the Felon, though he neuer made any fresh suit. S. Euidence 3.4. Appeals 55. Fitz.corr.460 21.H.8.12

Dama-

Dammages in Appeale.

1 IVſtice and reaſon do require, that when a mans life, his fame and credit, his lands, his goods, the diſheritance of his poſteritie, the corruption of his blood, and all that hée hath in this world to forfeit, hath béene put in hazard, and brought into queſtion and triall, without iuſt deſert, or other ground, but only vpon the malicious accuſation of ſome one or moe perſons, and that hée is found a true and lawfull man, and duely acquit by the Countrey of the offence, whereof hée was appealed, that he ſhould haue recompence for it againſt his falſe accuſor: and if his accuſor be not ſufficient, then againſt him or them that did procure or abet him to purſue the Appeale. And therefore the common Law did giue dammages to the Defendant in an Appeale, and aſſigned him a meane to recouer them, when he was acquit of the felonie. But becauſe the dammages which were to be recouered againſt the procurors, or abettors, were to be recouered by writ originall, viz. by a writ of Conſpiracie, and not otherwiſe, which was not ſo ſpeedie a remedie, as the great malice and wickednelle of the offence required, the ſtatute of Weſtminſter 2. was made for the quicker redreſſe thereof Anno 13. Edw. 1. the words whereof be theſe, viz. For as much as many through malice, intending to grieue others, doe procure falſe Appeales of homicide, and other felonies, to be ſued by Appellants, hauing nothing wherewith to ſatiſfie the king for their falſe Appeale, nor to anſwer to the partie dammages, It is ordained, that when any which is appealed of felonie impoſed vpon him, doth acquite himſelfe in the Kings Court in due manner, either at the Appellants ſuit, or the Kings, the Iuſtices before whom the ſaid Appeale ſhall be heard and determined, ſhall puniſh the Appellant by one yeares impriſonment: and neuertheleſſe, ſuch Appellant ſhall yéeld to the Appellée dammages by the Iuſtices diſcretion, hauing reſpect to the impriſonment or arreſt that the party hath ſuſtained by reaſon of ſuch Appeale, and to the ſlaunder which he hath receiued by the impriſonment, or otherwiſe, and alſo he ſhall pay a grieuous fine to the King. And if the Appellants be not able to recompence the dammages, inquiries ſhall be made by whoſe abetment the Appeale was maliciouſly commenced, if the Appellée deſire it. And if it be found by the ſame Enqueſt, that anie man is abettor through malice, hée ſhall be diſtrained by a iudiciall writ to appeare before the Iuſtices at the Ap-

42. Ed. 3. 12.

St. 13. E. 1. 12.

The puniſhment of the appellant and abettors, whē the Appellée is acquit.

pellées ſuit: and if he be lawfully conuict of ſuch abetment by malice, he ſhalbe impriſoned, and reſtore dammages, as is aforeſaid of the Appellant. In an appeale of the death of a man there ſhall no Eſſoine lie for the Appellant for any cauſe, in whatſoeuer court the Appeale ſhall be determined.

No Eſſoine for the Appellant in appeale of death.

The appeale muſt be commenced vpon malice.

2 And whereas the words of the foreſaid ſtatute of Weſtminſt.2. be, (For as much as many through malice) it doth thereby appeare, that if the Defendant in an Appeale be to recouer dammages, it ought to be in reſpect, that the Appeale was grounded rather vpon malice then vpon good matter. And therefore if the Defendant were indicted of that felony whereof the Appeale was ſued, before the ſuit of the Appeale, although the Defendant be after acquit thereof, yet he ſhall not recouer dammages, becauſe it ſhall be intended, that the indictment induced him to bring the Appeale, and not malice. But the law is meere contrary, if he were not indicted vntill after the Appeale commenced: Or if there be anie ſuch variance betweene the Appeale and the Indictment, that the acquitall of him vpon the one, is not the acquitall of him vpon the other, as if he be indicted as principall, and appealed acceſſorie, vel è conuerſo. And yet it is otherwiſe, if the variance be not in a matter of ſubſtance: for ſuch a variance ſhall not ſo preiudice, but that the acquitall vpon the one ſhal be alſo an acquitall vpon the other. By the letter of the ſaid ſtatute of Weſtminſt.2. this word (Malice) doth onely referre it ſelfe to Abettors and Procurors, but yet it is commonly taken to extend as well to the Appellant, as to them. St.13.E.1.12. 40.Ed.3.42. 22.Aſſ.pla.39 32.H.6.2. 14.H.7.30

The ſtatute extendeth to all felonies.

3 The ſaid ſtatute of Weſtminſt.2. ſaith, when any is appealed of felonie, this word Felony is not onely intended of ſuch offences, which were felonies at the time of making the ſaid ſtatute, but alſo of all other offences which haue beene made felonie by ſtatute ſithence the ſaid ſtatute. And therefore in an appeale of rape (which was made felonie by the ſame ſtatute of Weſtminſt.2.) the Plaintife was nonſute when the Enqueſt was to be taken, and the Defendant was arraigned at the kings ſuit, and found not guiltie, and the Iurie was charged to inquire of the Abettors. St.13.E.1.12. Fitz.cor.273. 381.

The defendant acquited by battell.

4 The words of the ſaid ſtatute of Weſt.2. be (When any doth acquit himſelfe in due maner) which may be intended aſwell that the Defendant ſhall recouer dammages, where he doth acquite himſelfe by battell, as where he doth acquite himſelfe by the country. But that acquitall by battell is to be conſtrued in this manner, where the Appellant when he is in the field will acknowledge his appeale to be falſe; for that is a kinde of vanquiſhment: for it muſt not be intended, where the Appellant is ſlaine in the field, ſeeing when the perſon of the Appellant is dead, the dammages be alſo gone for euer, without any recouery to be had of them. St.13.E.1.12. Fit.cor.98.

Where the acceſſorie in appeale ſhall recouer dammages.

5 It is to be noted, that there is an acquitall in Law, aſwell as an acquital in deed: for if two be appealed, one as principall, and the other as acceſſory, and the principall is acquit, by this acquitall the acceſſory ſhal recouer his dammages againſt the Appellant, if the Enqueſt which tried the principall, were alſo charged vpon the acceſſory, though they gaue no verdict of the acceſſorie: for in this caſe the Acceſſorie ſhall haue a writ of Conſpiracie by the common Lawe, becauſe by a meane he put his life in ieopardy. But it is otherwiſe, if the principall be acquit, and the acceſſorie did not appeare, but depended in proces: for in that caſe he ought expreſſly to be acquit by verdict, or otherwiſe, he ſhall not recouer 2.& 3.P.& M.Dier 120. 33.H.6.2. 41.Aſſ.pl.24.

recouer dammages by force of this statute, neither shal he haue a writ of Conspiracy by the common law.

St.13.E.1.12 6 These wordes of the foresaide Statute of Westminst.2. be of great moment (viz. when anie which is appealed of Felonie doth acquite himselfe in due manner) for if the Defendant doth barre the Plaintife of his Appeale, he cannot recouer dammages thereby against the Plaintife, except the barre be such as doth acquite the Defendant of the Felonie. And therefore if the Defendant doth pleade, that the Appellant is a bastard, or hath an elder brother, or was neuer accoupled in lawfull marriage, or such like pleas in barre, and by these pleas doth barre the Plaintife, yet he shall not recouer dammages against him, for the Defendant may be indicted againe of the same Felony, and attainted, notwithstanding by either of these pleas hée is discharged of the appeale, aswell against the King, as against the Appellant: for those pleas which do not trie the Defendants innocency in the felonie, doe neuer giue him dammages anie more than if hée had pleaded in abatement of the Writ of Appeale such a plea as had abated it. For notwithstanding such a plea doth discharge him of the Appeale as well against the king as against the partie, yet it doth not discharge him of the felonie. And the like Law is, if in an Appeale the Defendant doe barre the Appellant by a Demurrer in lawe, yet he shall not recouer dammages against him, for the Defendants innocencie in the felonie doth not by that meanes come to triall. And so it is, if in an Appeale of the death of a man the Defendant doe pleade to issue, and is found by verdict to kill the man in his owne defence, or by misaduenture, in these cases hée shall recouer no damages against the Appellant, for this is no acquitall of the felony: because the def. is inforced to purchase his pardon to purge him of the felonie: and besides it doth appeare, that this Appeale was not commenced vpon malice. In like sort, if the defendant in an Appeale, vpon his arraignment will demaund his Clergie, and the Court will take an Enquest of Office, to inquire whether he be guiltie, or not, and the Enquest doth find him not guiltie, yet by this acquitall he shall not recouer dammages, for in that he demanded his Clergie before triall, he did rather in a sort confesse the felonie by implication, than otherwise. But if he had refused his Clergie, and put himselfe vpon the Enquest, who had acquited him, then he had been acquite in due maner, according to the foresaide statute, and should haue recouered his dammages. And so it is, if the Defendant in an Appeale hath the release of the Appellant, or the kings pardon, and will waiue them, and pleade not guiltie, and put himselfe vpon the country, and is acquit, he shall recouer dammages, and yet he hath done a thing of record (viz. by purchasing the kings pardon) wherein by implication he doth confesse the felonie. But if it were a pardon by act of Parliament, he could not waiue it. If the Defendant be acquit erroniously without due proceſſe, he shall not recouer his dammages against the Plaintife, for that the wordes of the foresaid Statute of Westminst. 2. be: Se acquietauerit in curia Regis modo debito. As, where the Defendant doth appeare by the Exigent, vpon whom the Sherife hath returned Cepi corpus defendentis, where he should haue returned Exigi feci, and the Defendant doth appeare vpon the Euidence, and without taking aduantage thereof, pleadeth not guiltie to the Appeale, and it is so found for him: yet some do affirme, that he shall not recouer his damages, because he is acquit erroniously without due proces. But others vpon greater reason do hold, that the Error in the proces is not materiall, so long as there is no Error in the writ of Appeale, declaration,

Where the defendant is said to acquite himselfe in due maner, and where not.

27.Ass.pla.25 Fitz.Cor.77

Fitz.Cor.12

22.Ass.pla.77

Fitz.Cor.386

11.H.4.f.40.

9.H.5.2.

Fitz.Cor.444.

or pleading: for the defendant is arraigned vpon the originall writ, and not vpon the meane proces.

Acquite at the kings suit is only vpon an appeale.

7 The foresaid stat. of West.2. hath ordained,) That when any which is appealed of felony, doth acquite himselfe, either at the appellants suit, or at the kings suit: This suit of the kings is always intended vpon an appeale, when the defendant is arraigned vpon an appeale, after that the Appellant hath declared in his appeale, and is Nonsute: for if the defendant were acquite at the kings suit, vpon an indictment of the same felonie, yet he shall recouer no damages. And the manner how he shall recouer damages, being acquite at the kings suit, doth somewhat varie from recouering of dammages at the parties suit: for when it is at the kings suit, he shall not recouer his damages, though he be acquite, vntill he hath sued a Scire facias against the Appellant, to bring him into the Court againe, being out of the Court before by his Nonsute. But if he be acquit at the Appellants suit, hee shall haue his iudgement to recouer damages, without suing of anie further proceſſe. And if a woman that is appellant be Nonsute, and after doth take a husband, the Scire facias shall be awarded against the wife onely. St.13.E.1.12

Fit.Dammag. 77.

B

What Iustices may inflict the penaltie vpon the Appellant.

8 And though the foresaid Statute of Westminst.2. hath prouided, That the Iustices before whom the said appeale shall be heard and determined, shall punish the Appellant by a yeres imprisonment: that punishment can not be inflicted by the Iust. of Nisi prius: and yet by the Statute of Anno 14.H.6. the Iustices of Nisi prius haue power to giue iudgement in treason and felonie tried before them, and that as well where the Defendant is acquite, as where he is attainted. But yet they be not such Iustices, as this Statute doth meane: for that all the plea of Appeale was not heard before them, but a parcell, viz. the triall onely. St.13.E.1.12

St.14.H.6.1

2.& 3.P.& M.Dier 120. 14.E 4.14. 22.Ed.4.36.

The dammages for seuerall persons assessed seuerally.

9 And whereas the said Statute of Westminst. 2. would haue the Iustices in assessing of dammages for the defendant in an Appeale, to haue respect to his imprisonment, arrest, and slaunder: Therefore in an Appeale brought against diuers, if they be all acquit, the dammages shalbe tared seuerally, that is to say, euery of the defendants shall haue his dammages tared by himselfe: for it may be, that one hath cause to recouer more than the other: As, if one were appealed as principall, and the other as accessorie; or that the one were a Gentleman, or a man of greater estate, and the other of a meaner degree. But yet this recouerie of damages must be intended in one, who is by the law enabled to recouer dammages: for if an Appeale be brought against a woman couert onely, without her husband (as it must be vnlesse the husband committed felonie with his wife) the wife shall not recouer dammages, though she be acquit. And yet if the Appeale be brought against the husband and wife together, and they be both acquit, then the dammages shall be seuerally tared, that is to say, the husband shall recouer for his owne imprisonment, and the husband and wife shall recouer ioyntly for the imprisonment of the wife. St.13.E.1.12

8.H.5.6. Fit.Dam.77.

Fitz.cor.276.

Fit.Iudg.108

Where the appellant shall pay a fine to the king.

10 Though the foresaid Statute of Westminst.2. doth ordaine, That the Appellant shall be grieuously fined to the King, yet that is to be intended, where the Appellant shall yeld dammages to the Defendant: for if the case be such, as that the Appellant shall not render dammages to the Defendant, then he shall not pay a fine to the king, but shalbe amerced onely: as, where an appeale St.13.E.1.12

9.H.5.8

peale doth abate by miſnaming, the appellant ſhalbe only amerced. And yet if the appellant be Nonſute after declaration, he ſhall pay a fine to the king,
41.Aſſ.pla.8 and the Court will award proces againſt him for the ſame fine: and though the defendant be after acquit at the kings ſuit, by which meanes he ſhall recouer dammages againſt the appellant, yet the appellant ſhall not pay a new fine to the king, for that he hath paied it before. And if the defendant be found guilty, when he is tryed at the kings ſuit, the appellant hath no remedy to recouer the fine, which he hath paied before: for by the common Law, the plaintif in an appeale ſhould haue paied a fine for his Nonſute, which is the cauſe that a fine ſhal be paied by the appellant preſently vpon his Nonſute.

St.13.E.1.c.12 11 And for that the words of the ſaid ſtat. of Weſt.2. be, If the appellants be not able to recompence the dammages, inquiry ſhalbe made, by whoſe abetment the appeale was commenced: by thoſe words it is to be gathered, that if dammages be not to be recouered againſt the appellant, there ſhall neuer any inquiry be made of the abettors, as in the caſes aforeſaid. And where ẏ words of the ſtatute be, If the appellant be not able to recompence the dammages, it is intended all the dammages: for if the appellant be ſufficient to render part
2.H.5.6 of the dammages, but not the whole: inquiry ſhalbe made of the abettors, and
3.Ed.4.3 they ſhall pay the reſidue. In what caſe inquiry ſhal be of the abettors

3.a.13.E.1.12 12 The foreſaid ſtatute doth ordaine, That inquiry ſhalbe made of the abettors, if the appellee do deſire it: ſo that the Court of Office ought not to inquire thereof, but at the appellees requeſt. And if an appeale be brought againſt two, and one of them is acquit by verdict, if the Court do inquire of the abettors at the requeſt of the ſame defendant, and the Enqueſt doth find, that there be no abettors, and after the other defendant is arraigned, and alſo acquit, and if he do requeſt alſo, that inquiry may be made of the abettors, the verdict of the former Enqueſt, whereunto he was not priuy, neither againſt which he ſhal haue any remedy, being but an Enqueſt of Office, ſhall not bind him; but according to the words of the ſaid ſtatute, inquiry ſhall be made againe at his requeſt of the abettors: for though it be commonly inquired of the abettors, by the ſame Jury which doth trie the def. yet their inquiry therein is but an Enqueſt of office: for if they do find abettors, the abettors when they doe appeare, may trauerſe all that the Enqueſt hath found: As if they haue found that the appellant
3.Ed.4.3 was not ſufficient, or that ſuch a man, or ſuch a one were abettors: becauſe they that be ſuppoſed abettors, may ſay by proteſtation, not confeſſing the felonie, for their plea, that the appellant is ſufficient, or that they were no abettors: for the words of the ſaid ſtatute be (And if they be lawfully cõuict of ſuch abetment by malice) which doth proue that they ſhal haue their anſwer to that
Fitz.cor.386 which was found by the Enqueſt. And it is a good anſwer for him that is charged to be an abettor, to ſhew ſufficient matter to proue, that the defendant ought not to recouer his damages againſt the appellant, or that the defendant was not lawfully acquit, but erroniouſly. But if the abettors would take exception to the inquiſition found, for that the enqueſt did not find at what day, yeare, and place the abetment was made, that is no good exception: for in that
Fitz.cor.45 M.22.E.44 they haue found the abetment, they haue performed the words of the ſtatute (which be, That inquirie ſhal be made by whoſe abetment) and that they haue found: And touching the yeare, day, and place, the defendant in the Appeale muſt adde to the inquiſition, and ſo ſupply that which wanteth. What pleas the abettors may pleade.

Proceſſe againſt the abettors.

13 Becauſe the ſaid Statute hath ordained, That after by an Enqueſt an abettor is found, he ſhall be diſtrained by a iudiciall writ at the Appellées ſuit, to appeare before the Iuſtices: Therefore it is to be gathered by words of the ſaid ſtatute, that the proceſſe againſt abettors is Diſtreſſe infinit: for this proceſſe of Diſtreſſe is alwaies purſued by him that is acquit, who for his ſpeedy remedie may proſecute it, although the Appellant be not in the Court: as where the Appellant was nonſuit in the Appeale, and the defendant was arraigned at the kings ſuit, and acquit, and his damages tared, and the abettors found: in this caſe the defendant ſhall haue proceſſe againſt the abettors preſently, although the iudgement of damages ſhall be ſuſpended, vntill a Scire facias ſhall be awarded and returned againſt the Appellant. And the defendant who is acquit in an Appeale, may be nonſuit in the proceſſe which hée doth purſue againſt the abettors, and beginne againe if he will, for that nonſuit is not peremptorie to him. St.13.R.1,12 Fit.Dam. 77. Fit.cor. 386.

Nonſuit in the proceſſe againſt the abettors.

A writ againſt the abettors by the Appellée.

14 There is an originall writ to be purſued by the Appellée, who is acquit by verdict, againſt the abettors, for their abetment, wherein he may count againſt abettors, of greater damages than were aſſeſſed by the Iuſtices in the Appeale: for of thoſe damages tared in the Appeale, there will lie no Attaint, becauſe the inquirie touching them is but of office. And the defendant in the Appeale cannot compell the Iuſtices to increaſe thoſe damages, and therefore it is reaſon that he ſhould reléeue himſelfe by this action. Fitz Act. ſur ſtat. 23.

Procurors of indictments for ſuits in ſpirituall courts.

15 The ſame remedy which is given by the foreſaid ſtatute of Weſtminſt. 2. to the defendant in an appeale of Felonie, if he be acquite, is giuen by the Statute made Anno 1. Ric. 2. to him who is falſely indicted for purſuing in a ſpirituall Court a matter pertaining to the temporall iuriſdiction, after that hée is acquite thereof: The words of which Statute be theſe: The Prelates and Clergie of the realme do greatly complaine, for that people of holy Church ſuing in the ſpirituall Court for their tithes, and other things, which ought of right, and of auntient time were wont to appertaine to the ſame ſpirituall Court, and that the Iudges of ſpirituall Courts, and other perſons dealing therein according to the Law, be maliciouſly and vnduly for that cauſe indicted, impriſoned, and by the ſecular power horribly oppreſſed, and alſo enforced by violence, by othes, by grieuous obligations, and by many other means vnduly compelled to deſiſt, and vtterly to leaue off from the things aforeſaid, contrary to the liberties of the holy Church. Wherefore it is enacted, That all ſuch Obligations made, or to be made by dureſſe, or violence, ſhall be of no value. And touching thoſe which doe procure by malice ſuch indictments, and themſelues to be indictors, after that the ſame indictées be thereof acquite, ſuch procurors and indictors ſhall haue and incurre the ſame paine which is contained in the ſtatute of Weſt. 2. touching thoſe which doe procure falſe appeales to be made. And the Iuſtices of Aſſiſe, or other Iuſtices, before whom ſuch perſons indicted ſhall be acquite, ſhall haue authoritie to inquire of ſuch indictors and procurors, and to puniſh them duely, euery perſon according to his deſert. St.1.R.2.13

A Writ

A Writ of Conſpiracie.

1 A Writ of Conſpiracy doth lie, where two or three perſons, or more, of malice, and by couin, doe conſpire and deuiſe to indict an other perſon falſely, and after he which is ſo indicted is acquited, in this caſe he ſhall haue a writ of Conſpiracy againſt thoſe, who did ſo conſpire to indict him. But this writ doth lye againſt two perſons at the leaſt, which doe ſo conſpire: for if one perſon, of malice and his own falſe imagination, doth labour and cauſe one to be falſely indicted, the party which was ſo indicted ſhal not haue a writ of Conſpiracy, but an action vpon the caſe againſt him, who cauſed him to be falſely indicted. Where a writ of Conſpiracy doth lye.

28. Aſſ. p. 12. 21. H. 4. 2.

2 At the common law a writ of Conſpiracy did lie as well vpon an acquitall in an appeal, as it doth at this day on an acquitall vpon an indictment. But there hath growne a queſtion thereof ſithence the ſtatute of Weſt. 2. was made, for that in the writ of Conſpiracie, in the Regiſter, it is noted for a rule, and alſo it is affirmed by ſome others, That a writ of Conſpiracie doth not lye vpon an appeal, for that the ſaid ſtatute of Weſt. 2. gaue to the defendant dammages againſt the appellant and the abettors, and ſo in a ſort prouided for him an other remdie. But to ſay generally, that the defendant ſhall not haue a writ of Conſpiracy vpon an acquital in an appeal, for that he may haue dammages againſt the appellant and the abettors, is no ſufficient reaſon: for the ſaid ſtatute doth not giue to the defendant inquiry againſt the abettors, but vpon his owne requeſt, and therefore if he will omit to deſire it, he ſhall haue the remedy ordained by the common Law: which law is not changed by the foreſaid ſtatute of Weſt. 2. that is in the affirmatiue, and doth not reſtrain the beneſit giuen by the common Law. And it may be, that the dammages aſſeſſed by the Enqueſt of office, will not be ſo beneficiall vnto him, as the damages which wil be giuen by a Iury, that is taken at the parties ſute, whereunto he ſhall haue his challenges, and an Attaint, if they giue a falſe verdict. Alſo in a writ of Conſpiracie proces is to be awarded by Capias and Exigent, which proces is not to be graunted vpon an inquirie, according to the ſtatute of Weſt. 2. So that if the abettors be not diſtrainable, the defendant in an appeal ſhalbe without any remedy. And further, the damages which the abettors are to pay by force of the ſaid ſtatute of Weſt. 2. be the dammages that the defendant hath recouered againſt the appellant, which dammages the abettors are to pay for the defendant, or for his inſufficiencie, or nonabilitie, and not for them-

St. 13. E. 1. 33 Regiſtrum.

Fitz. Na. Bre. 114.

themſelues. And ſo it may be ſaid, that they may ſatiſfie for themſelues in a writ of Conſpiracie to be brought againſt them, or otherwiſe their offence ſhall be vnpuniſhed. And therefore notwithſtanding the ſaid ſtatute of Weſt. 2. a Writ of Conſpiracie doth lie at this day, as well where the defendant is acquited vpon an Appeal, as where he is acquited vpon an Indictment. And accordingly there is a writ of Conſpiracie in the Regiſter deuiſed for that purpoſe, amongſt other writs of Conſpiracie. But in an Appeal founded vpon an Indictment, if the defendant be acquited vpon the appeal, he ſhall not haue a writ of Conſpiracie, becauſe it cannot be intended to be founded vpon malice, when it is founded vpon an Indictment. And likewiſe, if an Appeal be founded vpon an Indictment, although the appellant bee Nonſute after declaration, and the defendant be arraigned, and acquite at the Kings ſute, yet the defendant ſhall not haue a writ of Conſpiracie, cauſa qua ſupra.

Conſpiracy maintenable vpon acquitall in an appeale or indictment.

33.H.6.2. 40.Ed.3.42. 22.Aſſ.p.39. 14.H.7.2.

3 He againſt whom a writ of Conſpiracie is to be brought, muſt be charged, that he conſpired with others to indict the plaintife falſely and maliciouſly, without any good or lawfull cauſe, or elſe the writ will not lye: and therefore if by the conſpiracie of two or moe, one is indicted of Murther, and vpon his arraignement it is found, that he did kill the man in his owne defence, or by miſadventure, or by any other meanes, which by the Law is iuſtifiable, he ſhall not haue a writ of Conſpiracie: for the Indictment was framed vpon good cauſe, viz. the death of a man, and neither vpon falſehood, or malice: and in like ſort, if he that is indicted or appealed of Felony, doth purchaſe his Charter of Pardon thereof, and pleadeth it, he ſhall not haue a writ of Conſpiracie, for by that pardon ſued he doth in a ſort confeſſe the committing of the felonie, and ſo cleere the falſhood or malice of any which did deuiſe to indite him. And yet notwithſtanding the obtaining of his pardon, he may waiue it, and plead not guiltie, and then if he be acquit of the felonie, he may haue his writ of Conſpiracie. But if the pardon be by act of Parliament, he cannot waiue it: for the Iuſtices ought to allow him his pardon without pleading of it, if it be a generall pardon.

The indictment muſt be falſe, which giueth the writ of Conſpiracie.

22.Aſſ.p.77. Fitz.Conſp.21 24.

21.H.4.40. 7.Ed.6.Dyer 85. 28.H.8.Dyer 28.

4 If two be indicted or appealed of felonie, the one as principall, and the other as acceſſorie, and the principall hath his Charter of pardon, or doth die before he be attainted, the acceſſorie ſhall not haue a writ of Conſpiracie againſt the parties that ſued the appeal, or deuiſed to indite the principall and him, for that it is not yet diſcuſſed, but ſtandeth indifferent whither the conſpiracie were falſe or true.

A conſpiracie doubtfull.

33.H.6.2.

5 If after a conſpiracie for an Indictment agréed vpon, to be preferred by two or more, the ſame conſpirators be ſworne vpon an Enqueſt to enquire of felonies, and they with the reſidue of the Enqueſt that be ſworne with them, do indict him of felonie, againſt whom they did before conſpire, in this caſe he ſhall not haue a writ of Conſpiracie againſt them, becauſe it cannot be intended falſe and malicious, when they did it by vertue of their oathes, and alſo did it with others beſides themſelues. And the ſame Law is, if after the conſpirators be ſworne vpon the Enqueſt of inquirie, and haue ſpoken and conferred with their companions, the Iuſtices ſhall remoue them from the Enqueſt, yet in that they were once ſworne, and the conſpiracie thereby diſcharged, this remouing them from the Enqueſt which commeth after ſhall not make

The conſpirators doe become indictors

21.Ed.3.17. 7.H.4.31. 27.Aſſ.p.12. 30.Aſſ.p.21. 22.Aſſ.p.77.

20.H.6.3.& 35.

make them to be againe in danger, and charge of the Writ of Conſpiracie:
27.Aſſ.p.12. 12.Ed.4.18. 21.Ed.4.67. 47 E.3.17. And ſo it is of a Juſtice of Peace; he ſhall not be charged by a Writ of Conſpiracy, for any thing which he doth in open Seſſions as a Juſtice of Peace, for he is a Iudge of record, and ſworne to execute his office duly, and may informe for the kings benefit, and to puniſh offendors as well as he can. But the Law is meere contrary, if one who is no Juſtice of record doth it, for he ſhall be charged by a Writ of Conſpiracy, if he do it with others. And in like ſort, if one doth come into the Court, and diſcouereth a felony, and is ſworn, and doth giue euidence to the Enqueſt, he ſhall not thereupon be charged in conſpiracie, if he doth not before conſpire with others falſely and maliciouſly. In a writ of Conſpiracy the defendant pleaded, that when the Iurors had taken their oathes vpon the indictment, he was ſworne to informe them: But becauſe an act done by him only without others, cannot be ſaid to be any conſpiracy, and ſo was no anſwere to that wherewith the plaintife charged him, for that cauſe he wayued his plea, and pleaded not guilty: for he that is to be charged with a conſpiracy, muſt be charged in reſpect that he did it with others, and falſely and maliciouſly.

35.H.6.14. 27.Aſſ.p.12. 35.H.6.14. 20.H.6.5. 9.H.4.11. 21.H.7. Kel.81.

A Iuſtice of peace.

A giuer of Euidence.

6 And for that it might be knowne to al men, whom the Law did conſtrue to be conſpirators, and were worthy to be puniſhed as conſpirators: Therefore there was a ſtatute made Anno 33.Ed.1. which defineth them in this manner, viz. Conſpirators be they, which bind themſelues by oath, couenant, or other alliance, that euery one ſhall helpe and maintaine others purpoſe, falſely and maliciouſly to indict, or to moue and maintaine ſuites: and alſo that cauſe infants to appeal others of felony, whereby they are impriſoned, and much grieued: and ſuch as retain men in the countrey with liueries, or fees, to maintain their leud enterpriſes, and to ſubuert the truth, as well the takers as the giuers. And Stewards and Bailifes of great Lords, who by their ſeigniory, office or power, do vndertake to maintain or vphold other quarrels or ſuits then ſuch which concerne their Lord, or themſelues.

who be conſpirators.

St.33.E.1.

7 The foreſaid ſtatute doth define conſpirators to be thoſe, which bind themſelues by oath &c. By which words it doth appeare, that a conſpiracy cannot be committed by one perſon alone, but by two at the leaſt: and therefore this Writ of Conſpiracy will not be maintained againſt one alone, though it were begun againſt diuers: for as ſoone as it ſhall appeare, that all but one be diſcharged therof, by their diſcharge that one ſhall alſo be diſcharged. But this diſcharge ought to be ſuch a one, as may be a diſcharge to all intents, as acquitall of all by verdict ſauing one, is an acquitall of that one alſo. And ſo it is, if al but one be diſcharged by matter in Law, as if they plead, that they were indictors, or ſuch like matter in Law, which will diſcharge them: for in thoſe caſes they be acquit of the conſpiracie to all intents. But if in a writ of Conſpiracie ſued againſt two, one of them is attainted, & the other doth barre the plaintife by a demurrer in law, yet that ſhall not diſcharge the other which is attainted, if the barre doth not containe matter to proue that he did not conſpire, or could not conſpire. And ſo it is, if in a writ of Conſpiracy brought againſt two, the one doth appeare & plead, and his plea is found againſt him: in this caſe iudgement may be giuen againſt him, though the other be not attainted: and yet in that caſe ſome do affirm, that in a writ of Conſpiracy againſt two, one of them ſhall not anſwere, vntill his companion doth appeare, for the inconuenience which may enſue, viz. that the one may be found guilty, & the other after may

A conſpiracie muſt be by more then one.

28.Aſſ.p.12. 22.Aſſ.p.77. 11.H.4.102.

14.H.6.25.

where one only charged in Conſpiracy

24.Ed.3.34. 27.Ed.3.80.

be

be acquit of the ſame conſpiracy. But if he that did firſt appeare, will plead without his companion (though the law doth not inforce him thereunto) and that the verdict do paſſe againſt him, and he found guilty of the conſpiracy, indgement ſhall be giuen againſt him, as is aforeſaid, though after his companion be acquited of the ſame conſpiracy: Nam volenti non fit iniuria.

No writ of Conſpiracy againſt the huſband and wife.

8 As a writ of Conſpiracy will not lie againſt one perſon only, no more will it be maintained againſt two, who do repreſent but one perſon, as the huſband and wife: for a writ of Conſpiracy is not to be brought againſt them, ſeeing the huſband and wife by common intendment ought to haue but one will, which will of the wiues is (or ſhould be) ſubiect to the will of the huſband: So that when they conferre and ſpeake together, all ſhall be intended the ſpeech and act of the huſband, and nothing of the wife. But it is otherwiſe, if ſhe do any act alone without her huſband, as if ſhe doe commit Treaſon or Felony &c. But a writ of Conſpiracy will lye againſt the huſband, his wife, and a third perſon. 40 Ed 3. 19. 38. Ed. 3. 3. Fitz. Nat. Brc. 116. L.

The forme of the writ of Conſpiracy.

9 The common forme of the writ of Conſpiracy in the Regiſter is this, viz. Rex vicecomiti N. Salutem &c. Si A. fecerit &c. tunc pone &c. B. & C. quod ſint coram nobis &c. oſtenſuri quare conſpiratione inter eos apud M. prehabita, præfatum A. de quodam equo furtiue apud R. capto & abducto indictari, & ipſum ea occaſione capi, & in priſona noſtra N. quouſque in curia noſtra coram dilectis & fidelibus noſtris I. & S. Iuſticiarijs noſtris ad Gaolam noſtram N. deliberandam aſſignatis, ſecundum legem & conſuetudinem regni noſtri acquietatus fuiſſet, detineri falſo & malitioſe procurauerunt ad graue damnum ipſius A. & contra formam ordinationis in huiuſmodi caſu prouiſæ. Et habeas ibi nomina plegiorum & hoc breue. Teſte &c. Which foreſaid writ is founded vpon a verdict: but if it be a writ of Conſpiracy founded vpon the plaintifes Nonſuite in an appeale, then the words of the writ be theſe, viz. Quouſque idem A. p cõſiderationẽ curiæ noſtræ inde quietus receſſit: Though in the Writ of Conſpiracie it is not alledged, that the place where the Conſpiracie was deuiſed, was within the Countie, and within the iuriſdiction of thoſe Iuſtices before whom the plaintife was acquit, yet the writ is good, notwithſtanding the omiſſion of that allegation: for it ſhalbe intended to be made within the ſame county, vntill the contrarie ſhalbe ſhewed. But it muſt néeds be expreſſed in the writ, before which Iuſt. the acquitall of the plaintife was, but not the manner of the acquitall, nor how he was acquited. And neither in this writ, nor in other writs of Conſpiracie mentioned in the Regiſter, all the indictment néed not to be rehearſed, but briefly the ſubſtance thereof, and it is ſufficiently in forme, if the writ of Conſpiracie doe agrée with the indictment, which it ought to do. Regiſter fol. 134. 35. H. 6. 46. 3. H. 6. 52. 19. H. 6. 34. 47. Ed. 3. 16.

A writ of conſpiracy for the acceſſorie.

10 In the Regiſter there is a writ of Conſpiracie for the Acceſſorie in felonie, when he is acquit by verdict, and another writ for him vpon the acquital of the Principall (if his life were put in ieopardy by the ſame Enqueſt that acquited the principall) but yet theſe two writs doe differ in forme, for the firſt is Quouſq; coram præfatis Iuſticiarijs noſtris inde ſecundum legem & conſuetudinem noſtram acquietatus fuit: And the other is, Quouſq; principal' ſecundum legem &c. acquietatus fuiſſet, & idem acceſſorius quietus receſſit. And it is ſufficient, if in the writ brought by the acceſſory he make mention of his own impriſonment, and not of the principals. And this forme of quietus receſſit, is vſed 33. H. 6. 2.

alſo

22.H.6.40. alſo when a writ of Conſpiracie is brought vpon an acquitall in an Appeale at the Kings ſuit, after the parties nonſuit. In a writ of Conſpiracie the plaintife may ſuppoſe that the conſpiracie was made in two Townes, becauſe in one day the Conſpirators may meete in ſeuerall Townes. Conſpiracy in two townes.

11 In a writ of Conſpiracie it is a good plea for the defendants to plead in barre of the Action, a concord betweene the plaintife and them: And ſo it is to 21.H.6.28. plead any matter which will proue the acquitall of the plaintife erronious, for then was not the plaintife lawfully acquit according to the Statute of Weſtminſt.2. Barres in conſpiracie.

12 When any is conuict in a writ of Conſpiracie at the ſute of the partie, 43.Ed.3.33. the iudgement is none other, but that the plaintife ſhall recouer his damages, and that the defendants ſhalbe taken. But if one be indicted and conuicted of conſpiracie, at the Kings ſute, the iudgement is more grieuous, for then the 27.Aſſ.p.59. 46.Aſſ.p.11. 34.Ed.3.34. iudgement is, That they ſhall loſe their frée law, to the intent, that they ſhall not after that time be put in Iuries or Aſſiſes, nor otherwiſe produced as witneſſes to teſtifie truth: and if they haue to do in the Kings Court, they ſhall make their Attourney to ſue for them, and that they ſhall not approach within twelue miles of the Kings Court, and that their lands, goods, and cattels ſhall be ſeiſed into the Kings hand, and their houſes waſted, and their wiues & children thruſt out of doores, and their trées pulled vp by the roots, and their bodies taken and impriſoned. And this is tearmed a villainous iudgement, becauſe it bringeth villany and ſhame to him that receiueth it. Iudgement in conſpiracie.

13 And becauſe that wicked offence of conſpiracie ſhould be inquired of, and puniſhed, as well by indictment, as by writ, there was a Statute made St.28.E.1. Anno 28.Ed.1. called Articuli ſuper chartas, whereby it was ordayned, That in right of Conſpirators, falſe informers, and imbracers of Enqueſts, Aſſiſes, and Iuries, the King hath prouided remedie by a Writ out of the Chauncery. And from henceforth the King will, that his Iuſtices of the one Bench & the other, and the Iuſt. aſſigned to take Aſſiſes, when they come into the countrey to do their office, ſhall make enquiry thereof at any mans plaint without writ, Regiſter fol. 188. and ſhal without delay do right to the plaintifs. And the Iuſtices may be commanded by a writ directed vnto them out of the Chancery, to execute the ſame ſtatute, although the ſtatute of it ſelfe is a ſufficient warrant and authority for them ſo to doe: which remedie mentioned in the foreſaid ſtatute, was intended St.20.Ed.1. to be ordained by an other ſtatute, called the ſtatute of Conſpirators, made Añ 20.Ed.1. at Berwike vpon Tweed, which doth prouide a writ of Conſpiracie againſt conſpirators, maintainers of falſe quarels, and champertors, and expreſſeth the forme of that writ. Inquiry of Conſpiracies by Iuſtices.

St.28.Ed.1. 14 But becauſe the foreſaid Statute of Articuli ſuper chartas did prouide onely a remedie at the plaint of the partie, and did not giue the Iuſtices in the ſaid Statute mentioned power to enquire of, heare, and determine conſpiracies, at the ſute of the King, neither did it giue authoritie to the ſaid Iuſtices, to adiourne the ſute, if for ſhortneſſe of time it could not be determined St.4.Ed.3.11 in the countrey: Therefore by a ſtatute made Anno 4. Edw.3. the ſame enormities were redreſſed by theſe words, viz. Where, in times paſt diuers people of the Realm, as well great as other, haue made alliances, confederacies, and conſpiracies, to maintaine parties, pleas, and quarrels, whereby diuers haue him Inquirie of conſpirators at K. or parties ſute.

beene wrongfully diſherited, and ſome ranſomed and deſtroyed, and ſome for feare being maymed, and beaten, durſt not ſue for their right, nor complaine, nor the Iurors of Enqueſts giue their verdicts, to the great hurt of the people, and ſlaunder of the Law, and common right: Therefore it is agréed, that the Iuſtices of the one Bench, and of the other, and the Iuſtices aſſigned to take Aſſiſes, whenſoeuer they come to hold their Seſſions, to take Enqueſts vpon Niſi prius, ſhall enquire, heare, and determine as well at the Kings ſute, as at the ſute of the partie, of ſuch maintainers, bearers, and conſpirators, and alſo of champertors, and of all other things contained in the ſaid Article, as well as Iuſtices in Eire ſhould do, if they were in the ſame Countie. And that which cannot be determined before the Iuſtices of the one Bench or of the other, vpon the Niſi prius, for ſhortneſſe of time, ſhalbe adiourned into the places wherof they be Iuſtices, and there ſhalbe determined according to right and reaſon.

15 Notwithſtanding the foreſaid Statutes, there were ſuch deuiſes and practiſes to execute malice and reuenge, & deſire to put others in perill of their liues, lands, and goods, that ſome would frame indictments or appeals againſt others of the Kings good and obedient ſubiects, of Treaſon, Felony, or treſpas, in ſeuerall forrein counties, liberties, and franchiſes, where the ſaid perſons did neuer dwell nor conuerſe, and there they were purſued to the Exigent, and ſometime outlawed, before that they could know of it: For the remedy wherof there was a ſtatute made Añ 8. H. 6. wherein amongſt other things it was enacted, That if any perſon ſhall be indicted or appealed of felony, treaſon, or treſpas, in a forrein county, he ſhall in an action vpon the caſe, recouer treble damages againſt euery procurer of ſuch indictment, or appeall, after hee is duly acquitted by verdict. And the like proces ſhall be in the ſame, as in an action of Treſpas vi & armis. S. Appeales 61.

St. 8. H. 6. 10.

Procurers of an indictment or appeale in a forrein county.

16 Becauſe diuers people vpon malice, enuie, and deſire of reuenge, did ofttime cauſe the Kings liege people to be appealed or indicted in diuers counties, of Treaſons or Felonies, ſuppoſing by the ſaid appeals or indictments, that the ſaid Treaſons or Felonies were committed in one certaine place, whereas there is no ſuch place within the ſaid county where the ſaid indictment is found, nor any ſuch place in the county, as is declared by the ſaid Appeale: Therefore by the ſtat. made Añ 7. H. 5. Añ 9. H. 5. & Añ 18. H. 6. it was ordained, That the ſaid Appeals and indictments, and the proces thereupon ſhall be void, and adiudged of no force. And that the ſaid Appellées and Indictes may haue their writs of Conſpiracie againſt their indictors, procurors, and conſpirators and recouer their damages. And that the indictors, procurors, and conſpirators ſhall be puniſhed by impriſonment, fine and ranſome, for the Kings aduantage, by the Iuſtices diſcretion.

St. 9. H. 5. 12. St. 18. H. 6. 12.

An offence ſuppoſed to be in a place where there is none ſuch.

The

The Coroner and his Authoritie and duetie in Felonies, &c.

A Coroner is an ancient officer of trust in this realm, ordained to be a principall preserver and keeper of the Peace, to make record of the Pleas of the Crowne, and of his owne view, and of Abiurations, and of Outlawries, and of Appeales and Accusations of felons made before him, and of Nonsuits of plaintifes in Appeales, and of all things done in the Countie which belongeth to the office of the Coroner. And also an Appeale shal be entred of Robberie or Larcenie in the presence of the Coroner in the Court of any free man which hath a franchise of Infang theefe. Which Coroner shall be chosen into the same office vpon the death, or other auoydance of an other, by force of the Kings writ directed to the Shirife of that Countie where that office is void, by death, or otherwise. And the same election shall be in the full Countie Court by warrant of the Kings writ: The tenour of which writ is as followeth. The Coroners office. Election of the Coroner.

2 Iames by the grace of God &c. To the Shirife of the Countie of Buckingham, Salutation &c. Because L. one of our Coroners of the Countie is deceased, as we are informed, we do commaund thee, if it be so, that thou doest cause an other Coroner to be chosen in thy full Countie, by the assent of the same Countie, in the place of the same L. according to the forme of the statute therefore made and prouided: Who taking his oath according to the custome, shall from thencefoorth do and performe all things which doe appertaine to the office of a Coroner in the Countie aforesaid. And cause such a one to be chosen which best can, and will attend that office. When a Coroner is chosen, he shall continue in his office vntill the King hath otherwise determined his pleasure, or that the King doth dye, or that there be an other King: for he is not changeable euery yeare, as the Shirife and Escheator is. And then the Shirife shall giue him an oath, That he shall lawfully and without demaunding of any reward, make his Enquests and inrolments, and doe all things which do belong to the office of the Coroner. The writ de Coronatore eligendo. 4. Ed. 4. 44. How long a Coroner shall continue in his office.

3 And because many meane men, and of small discretion, were diuers times chosen into the said office of Coroners, and for that it is expedient that

discreet, lawfull, and sage men should meddle in the same office; therefore by
Who shall be Coroners, & by whom they shal be chosen.
the statute of West. 1. made Anno 3. Ed. 1. it was ordained, That al Coroners of Shires shall be chosen in the full Counties, by the commons of the same Counties, of the most meete and worthie people, which may be found in the same Counties, to execute the said offices, & of the most sage & wise Knights, which do best know, can, and will attend vnto the same office, and which will lawfully attach and present the pleas of the Crowne. And the same Statute was after rehearsed and confirmed by the stat. of An. 28. E. 3. by which it was ordained, That Coroners of Counties shall be chosen in the full Counties, by the commons of the same Counties, of the most fit and lawfull persons of the same Counties: Alwaies saving to the King and other Lords, which ought to make such Coroners their Franchises. But by the Statute of Anno 14. Ed. 3. no Coroner shall be chosen, if he haue not sufficient land in fée in the same County, whereof he may answer all manner of people. And because this Statute is in the negatiue, therefore the not satisfying of it, is a sufficient cause to remoue a Coroner from his office. And he is said to haue sufficient land, if he hath land in the Countie whereupon he may liue according to his degrée, to execute that office. And whereas the forsaid Statute of 28. Ed. 3. hath ordained, That a Coroner shall be chosen by the commons of the sayd Counties, that is intended by the freeholders of the same Counties, and by none other.

Sta. 3. E. 1. 10.

Sta. 28. E. 3. 6.

A Coroner must haue sufficient land.

Sta. 14. E. 3. 8.

Fitz. Nat. Br. 164.

whether Coroners ought to be knights.

4 The forsaid statute of Westminster 1. committeth the office of Coroners to Knights and none others: and therefore in former ages it was a cause amongst others, to discharge a Coroner of his office, that he was no Knight: But because those words were put into the Statute onely, to the intent that the Coroner should haue sufficient within the same Countie: for which cause, if that be performed, the intent of the Statute is obserued.

St. 3. Ed. 1. 10

Causes to remoue a Coroner.

5 And also the same Statute doth ordaine, That such shall be chosen Coroners, which do know, can, and will attend vnto the said office: And therefore if any be chosen, which do not know, cannot, or will not attend vnto the same office, they shal be remoued and discharged of that office by the K. writ, wherein the cause of his discharge shall be rehearsed: either because he is imployed in other affaires of the K. or that he is sicke of some grieuous and long infirmitie, or that he is lame, or that he is not meet for that office, (viz. by force of some clause contained in the said statute of West. 1.) or that hee hath not sufficient lands within the same Countie, or that he hath the Palsey, or that he is dwelling in the vttermost part of the Shire, or that he is chosen Shirife, or Verderer of a forrest. But if any of those causes surmised be false, whereby the Coroner is discharged of his office by false suggestion, then he may sue for a Commission to be awarded out of the Chauncerie, to enquire of the same suggestion. And if it be found false, and returned so into the Chauncerie, then there shall be a Supersedeas awarded out of the Chauncerie, to the Shirife, that he shall not remoue the Coroner. And if hee be remoued, that hee shall suffer him to inioy the said Office as he did before. But it is sometimes vsed, and most commendable for him that is chosen Coroner, if he perceiue in himselfe any of the forsaid impediments, to purchase a writ out of the Chauncerie, to discharge him of the said Office.

Co. li. 5. 37.

Fitz. Nat. Br. 165. N.

Register fol. 177.

6 And because the said Coroner should doe iustice and right to all persons, without

Sta.3.Ed.1.10 without extortion, or exaction, the foresaid statute of Westm 1. doth further ordaine, That Shirifes shall haue counter-rolles with the Coroners, aswell of Appeales, as of Enquests, of Attachments, and other things which do belong to his office. And no Coroner shall demaund or take any thing for the execution of his office, vpon paine of a grieuous forfeiture to the King. Which said statute was also confirmed by a statute made at Excester, Anno 14. Ed. 1. And by the statute made Añ 1.H.8. it was enacted, That vpon request made to a Coroner to come and inquire vpon the view of any person slaine, drowned, or otherwise dead by misaduenture, the said Coroner shall diligently do his office, vpon the view of the bodie of euery such person or persons, without any thing taking therefore, vpon paine to euery Coroner that will not endeuour himselfe to do his office, as is aforesaid, or that hee taketh any thing of any person, for doing of his office vpon euery person dead by misaduenture, for euery time fortie shillings. And the Iustices of Assises, and Iustices of Peace, within the Countrey where such default of Coroners be, haue authoritie to inquire thereof, and to determine the same, aswell by examination as by presentment. But by a statute made Anno 3.H.7. it was prouided, That a Coroner shall haue for his fee vpon euery Inquisition taken vpon the view of a bodie murdered, or otherwise slaine, iij. s. iiij. d. of the goods and cattels of the murderer, if he haue any, and if he haue no goods, the Coroner shall haue his fee of such amerciaments as any Townelhip shall be amerced for escape of any such murderer. And though by the Common Law the Coroner hath a fee, a peny of euery Vicinage, as appendant to his Office, at the comming of the Iustices in Eire, yet that fee is not repugnant to the foresaid statute of Westminster 1. for hee taketh not that to execute his Office, but as a fee of right incident to his office, though he do nothing in the execution of the said office.

where a Coroner may take a fee, and where not.

Sta.14.Ed.1.
Sta.1.H.8.7.
Sta.3.H.7.1.
Fitz.Cor.321. 372.

Sta.3.Ed.1. Bracton de Corona,cap.5.

7 It appeareth both by the statute intituled Officium Coronatoris, and by Bracton, that if any Coroners be aduertised by the B. Bailifes, or other honest men of the Countrey, to come to those that be slaine, sodainly dead, or wounded, or to house breakers, or to any place where Treasure is found, they shall immediatly come, and forthwith commaund foure, fiue, or sixe of the next Townes, that they appeare before them in such a place: and when they come, the Coroners vpon their oath, shall inquire, if they did know of that man that was killed, where he was first slaine, whether in the field, or in the house, bed, Tauerne, or in any companie, and who were there. Likewise they shall inquire who were culpable, either of the act, or force, and who were present, either men or women, and of what age they be, so they can speake, and haue discretion: And they which be found guilty by Inquisition in the foresaid maner, shall be taken, deliuered to the Shirife, and committed to the Gaole: and as many of them as be not found guiltie, shall be attached, vntill the comming of the Iustices, and their names inrolled. And if any man be sodainly slaine, and found in the fields, or woods, it is to be considered whether he were slaine there or not: if hee were brought thither, their steps that brought him (if it may be) shall be followed, and so shall the tracke of horse and cart. And also it shall be inquired, if he that was slaine were knowne or vnknowne, & where he lodged the night before: And if any be found guiltie of the death of such, immediatly the Coroners shall come to his house, & inquire what cattell he hath, and what corne in his graunge, and what on the ground; and if he be a free man, what free land he hath, and what it is worth by the yeare, beside the Lord of the fees

Of what things Coroners shall inquire.

Murder.

Inquirie of the offendors.

A man found slaine.

ſeruice: but the land ſhall remaine in the kings hands, vntil the Lord of the fee hath made a fine for it. And when they haue inquired of all things, then they ſhal cauſe them to be priced, as if they ſhould ſtraight way be ſold, and the body of him which is dead ſhall be buried. Moreouer, the Coroners ſhall enquire of them which be drowned, ſodainly ſlaine, or ſtrangled by the ſigne of a cord tyed ſtrait about their neckes, or about any of their members, or vpon any other hurt found vpon their bodies, or ſome other manifeſt token, and ſhall attache the finders, and all other in their company. A Coroner ought to inquire of treaſure that is found, who were the finders, and who are ſuſpected thereof, which may be gathered by ſome mans delicat liuing, and frequenting of Tauernes, which (vpon ſuſpition) ſhall be attached by foure, or fiue, or mee pledges. If any be appealed of Rape, he ſhall be attached by foure, or fiue pledges, if the appeale be freſh, and the ſigne of the truth apparant, or an open outcry leuied: But if it be without any manifeſt token or outcry, two pledges ſhall ſuffice. Vpon appeale of Maihem, if the wounds be mortall, they which be appealed ſhalbe forthwith apprehended, and kept vntil it be known whether he that is hurt ſhall recouer or not: if he dye they ſhall be retained, if he liue they ſhall be attached by foure or fiue pledges, according to the bigneſſe of the wound: If it be for a Maihem, then there ſhall be no leſſe than foure pledges: if a ſmall wound be, then two will ſerue. The length, breadth, and depenelle of all wounds ought to be viewed, and with what weapons, and in what part of the bodie the partie was hurt, and alſo how many wounds there be: how many be culpable, and who gaue the wound: all which things ſhall be inrolled in the Coroners roll. Horſes, boats, carts, commonly called Deodands, whereby any perſon ſhall periſh, ſhall be vained and deliuered to the whole towneſhip, which ſhalbe anſwerable therefore. Whoſoeuer layeth hands vpon the wreck of the ſea, ſhalbe attached by ſufficient pledges. The price of the wrecke ſhalbe vained, and deliuered to the towne to anſwer, &c.

Sodainely ſlaine.

Treaſure troue.

Rape.

Maihem or wound.

The length, breadth, and depenelle of wounds.

Deodands.

Wreche of the Sea.

8 If doth firſt appeare by the words of this Statute, that the Coroner ought to doe his office in his owne proper perſon, and not by Deputie, viz. They ſhall preſently come to thoſe that be ſlaine, or ſodainely dead. And ſo alſo it is declared by the Statute of Exceſter, and proued by the foreſayde definition of the Office or Authoritie of a Coroner, viz. That a Coroner ſhall make a Record of his owne view: which is, that he ſhall ſee the dead bodie when he doth make the inquirie, or otherwiſe the inquirie is not good: For if he will inquire of any dead perſon without the ſight of him, this is without authoritie, and ſo void. And therefore if the bodie be buried before his comming, he muſt record it in his Rolles, to the intent that the towne where he was buried may be amerced for it, by the Juſtices in Eyre vpon the ſight of the Coroners Rols. And yet notwithſtanding the Coroner muſt dig the bodie out of the ground, and make his inquirie vpon the ſight of the bodie, as he ſhould haue done if it had not been buried. If one be indicted before the Coroner vpon the ſight of the body, and then the body is by the Coroners commandement buried, and after, for that the indictment is not ſufficient, the Coroner doth take the body out of the earth, and indict the offendor againe: this is lawfully done, being vpon the ſight of the bodie, though the bodie had beene buried fourteene dayes before. If a dead bodie that is ſlaine, or ſodainely dead, be ſuffered to lye vpon the ground vnburied to putrifie, or to yeld an euill ſauour, without ſending for the Coroner, the towne where the ſame bodie did ſo lye vnburied, ſhall be amerced. And likewiſe if a priſoner doe dye in

The Coroner ſhall execute his Office in his owne perſon. St. 3. Ed. 1.

St. 14. E. 1.

The Coroner ſhall ſee the dead body. Fitz. Cor. 107.

Fitz. Cor. 329

Britton. 4. 21. E. 4. 7. 8. 2. R. 3. 8.

Body buried taken vp againe.

Fitz. Cor. 421

Fi. Cor. 421; Britton.

in prison, and the keeper of the prison doth not send for a Coroner, he shall be amerced. And though a Coroner shall make a record of his owne view, and
St.9.H.3.17. enter the same into his roll, yet by the statute of Magna Charta no Coroner, Sheriffe, Constable, Escheator, or other Bailife of the King shall hold pleas of the Crowne. Pleas of the Crowne.

St.3.Ed.1. 9 The said statute of West.1. ordaineth, That if any Coroners be aduertised by the Kings Bailifs, or other honest men of the countrey, they shall presently come and make inquisition: whereby it appeareth, that if the Coroner shall be slacke and negligent in comming to doe his office, after the Bailifes or men of the countrey haue sent for him, he shall be punished. And if he omit to
Fitz.Cor.292 doe his office, as to make inquirie of, or to enter into his roll the death of a man, or any other thing which by the law he is to doe, or make a record of, he
St.3.H.7.1. shall be committed to prison. And by the statute of Anno 3.H.7. If any Coroner be remisse in viewing of a dead body murdered, or slaine, and do not enquire of them that haue done the murder, or death, of their abettors, and consenters, who were present thereat, and their names: or so found, doe not inroll, certifie, and deliuer his inquisition to the Iustices of the next gaole deliuerie in the Shire where the inquisition is taken, that the same Iustices may proceed against such murders, if they be in the gaole, or else certifie the inquisition into the Kings Bench, the said Coroner shall forfeit to the King for euery offence v.l. The Coroner must prefer thy do his office. Coroners shal inquire and certifie at the gaole deliuery.

St.3.Ed.1. 10 The foresaid statute of West.1. as touching inquisition, doth only ex-
35.H.6.27. tend to a dead person: whereby it seemeth that a Coroner cannot inquire of any other felony, but of the death of a man: Sauing that in Northumberland the Coroner doth inquire of all felonies: But that authoritie they maintaine by prescription. A presentment was made before the Coroner, that a felon being apprehended for stealing, was led to a church by certaine persons: and this
27 Ass. p 55. was adiudged a void presentment, because he cannot inquire thereof by vertue of his office: but if he had receiued the Kings writ, or commission to haue made inquirie thereof, hee might haue done it. And yet some doe affirme, that he may inquire of the rape of a woman, and of breaking of prison (being other felonies different from the death of a man) and of Sturgeon, and Whales taken. If a man be slaine in the armes or braunches of the sea where one may see the ground on both sides, the Coroner shal inquire thereof, and not the Ad-
Fitz.Cor.399 mirall, because the countrey may take knowledge thereof: which proueth, that by the common law the Admirall had no iurisdiction but vpon the mayne
St 13.R.2.5. Sea, before the Statute of 13.R.2. & 2.H.4. were made. And though the
2.H 4.11. Coroner cannot inquire of any other felonies, but of the death of a man, yet
St.3.Ed.1.9. by the Statute of West.1. made Anno 3.Ed.1. it was ordained, That if the Sheriffe, Coroner, or any other Bailife within Franchise or without, for reward, intreatie, or any affinitie, doe conceale, consent, or procure to conceale the felonies done in their liberties: or otherwise will not attach or arrest such felons, whereas they may, or will not do their offices for the fauour that they beare to such offendors, and be thereof attainted, they shall be one yeare imprisoned, and make a grieuous fine: And if they haue not wherof to make fine, they shalbe three yeares imprisoned. So that a Coroner may attach or arrest any maner of felon whatsoeuer, though he cannot inquire of him. Slaine in an arms of the sea. Admirall. A Coroner concealing a felon, or not arresting him.

11 It is contayned in the before specified Statute of Westminst. 1. That

The force of a Coroners record.

all things ought to be inrolled in the Rolles of the Coroner: Which proueth that the same inrolment is the Coroners Record, and that the sayd Record is of great force: for if the thing inrolled be within the compasse of the Coroners authoritie, it shall be of greater credit than the Record of any other: For if a thing be found before the Justices in Eyre, contrary to that which was entred into the roll of the Coroner, it shall be void. And the Record of the first Coroner, viz. the Record of him which first sitteth vpon the view of the bodie, shall be preferred before the Record of the second Coroner, who doth after sit and inquire of him. If a man become an Appruour before the Coroner, and doth appeale others, he shall not be receiued to say after, That he did it by dures of imprisonment, but shall be estopped thereof by the Coroners Record. And in like sort, if one hath abiured the Realme before the Coroner, and after doth returne, and is arraigned, and doth plead, that he is not the same person: if in this case the Coroner doth record him to be the same person, he shalbe condemned. And the same law is, if a man be arraigned of breaking of prison, he shal be estopped, to plead not guilty thereunto, if the Coroner doth record, that he did at an other time confesse it before him. And if an Appruour to prolong his life, doe appeale others, where there be none such, and that be testified by the Coroner, the Appruour shall be hanged, without further enquirie of the appruement.

Bro. Cor. 352.

The first Coroner.

Fitz. Co. 107.

Appruour.

Dures.

Fitz. Cor. 118

Abiuring before the Coroner.

12. Ass. p. 29.

Fitz. Co 124.

Confession of breaking of prison.

Appruour.

25. Ed 3. 42. Fitz. Cor. 243

435.

25. Ed. 3. 24.

Who ought to appeare vpon the Coroners inquisition.

12 By the Statute of Marlbridge made Anno 52. H. 3. it was ordayned, That vpon an inquisition to be taken by a Coroner of the death of a man, euery one of the age of twelue yeares ought to appeare, except they haue a reasonable excuse of their absence.

St. 30. H. 3. 24

The Coroner may take appeals.

13 And though the foresaid Statute of Officium Coronatoris doe make mention but of certaine Appeales, as an Appeale of Rape, Mayhem, &c. yet the Coroner with the Sherife hath authoritie to take Appeales of Robberie and other Felonies, and also to take the Appeals of an Appruour, in this sort and manner following, viz. he may take an Appeale of Robberie, or other felonie committed in the same countie where he is Coroner, and not elsewhere. But he may take the Appeale of an Appruour, of an offence committed in any countie of England: and the reason of this difference is, because by the appruement the Appruour is attainted of Felonie, but so is not the offendor in the other case, and therefore if in the former case he should receiue such an Appeale of Robberie, or other Felonie, it could not be tryed by a Jury of the countie where he is Coroner, for that the felonie was committed in a forreine countie. And yet in the foresaid case of appruement in an other countie, the Coroner cannot award Proces thereupon, but he must enter it into his roll, and send it to the Justices of Gaole deliuerie, who shall award Proces vnto the Shirife of that forreine countie, to apprehend him which is so appealed. And as the Coroner may take the Appeale of an Appruour in an other countie, so vpon the same reason he may take the abiuration of one which hath confessed a felonie committed by him in an other countie.

Fitz. Cor. 437

Fitz. Cor. 462

Stopping vp a place of danger.

14 If the Coroner shall find any person drowned in a dangerous pond or pit, he must commaund the towne where the same pond or pit is, to stop it vp, and enter the same his commaundement into his Roll: And if after it be found before the Justices in Eire, that the same pond, or &c. is not stopped vp, the whole towne where it is shall be amerced.

Fitz. Cor. 418

15 Though

15 Though there be diuers Coroners in a County, yet it is not requisit to haue more than one to enquire vpon the sight of a dead bodie. And in like sort one is sufficient to giue iudgement vpon an Outlawrie, and in Rediſeiſin it is sufficient to haue two Coroners. But where Proceſſe is to be awarded to the Coroners, in default of the Sherife, there all the Coroners within the Countie ought to serue, or otherwise it is not good: for they execute that office as Ministers, and not as Iudges, as they do in other cases. And by the Statute of Anno 23.H.6. euerie of the Coroners shall be present in his proper person at the assessing of the wages of the Knights of the same shire for the Parliament, with the Sherife, Undersherife, Bayliffes, and others that will be present to assesse the wages of the said Knights, after the deliuerance of the Kings writ De ſolutione feodi Militum Parliamenti, and proclamation thereof made, vpon paine of forfeiture of euery of them making default, fortie shillings to the King.

Where the presence of all the Coroners is requisit, and where but of some one of them.

14.H.4.35.
39.H.6.41.
23.H.6.11

16 By the Statute made Anno 1.& 2.P.& M. it is ordained, That euerie Coroner vpon any inquisition before him found, whereby any person shal be indicted for murder or manslaughter, or as accessorie to the same before the murder or manslaughter committed, shall put in writing the effect of the euidence giuen to the Iurie before him, being materiall. And he hath authoritie to bind all such by Recognisance, or Obligation, as do declare ante thing materiall to prooue the saide murder or manslaughter, or to be accessorie to the same, to appeare at the next generall gaole deliuerie to be holden within the countie, citie, or towne corporate, where the triall thereof shall be, then and there to giue euidence against the partie so indicted, at the time of his triall, and shall certifie as well the same euidence, as such bond in writting, which he shall take, together with the Inquisition or Indictment before him taken and found, at, or before his said triall to be made. And if any Coroner shall offend in any thing to the contrary, then the Iustices of gaole deliuerie for the shire, citie, towne, or place where such offence shall be committed, vpon due proofe thereof by examination before them, shall for euerie such offence, set such fine on such Coroner, as they shall thinke meete.

Stat. 1.& 2. Ph.& M.13.

The Coroner must record the euidence, and bind the parties to giuen.

17 Forasmuch as heretofore many felonies that haue beene committed within the Verge, haue beene vnpunished, because the Coroners of the county haue not beene authorized to inquire of felonies done within the Verge, but onely the Coroner of the kings house, which neuer continueth in one place, by reason whereof there can be no triall made in due maner, nor the felons put in Exigent, nor outlawed, nor nothing presented in the Eire, which hath beene great damage to the King, and to the hinderance of his peace: For the redresse whereof by a statute made Anno 28.Ed.1. intituled Articuli super chartas, it was ordained, That if the death of a man (where the Coroners Office is to make view and Enquest) doth chaunce in any countie where the Kings house is, and within the Verge, the Coroner of the same countie shalbe commanded with the Coroner of the Kings house, to execute his office, and to inroll it. And that thing which cannot be determined before the Steward, shall be committed to the common law, so that Exigents, Outlawries, & Presentments, shall be thereupon made to the Iustices in their circuits, by the Coroner of the coũtie, as well as of other felonies done out of the Verge: nevertheleſſe they shall not omit by reason hereof, to make attachmẽts freshly vpon the felonies done. Which foresaid statute, forsomuch therof as doth touch or concerne the kings house

Inquirie of a man slaine within the K. house & verge.

28.Ed.1.3.

house only, is in part altered by the statute of Anno 33. H. 8. whereby it is ordained, That all Inquisitions vpon the view of persons slaine within anie of the Kings Palaces or houses, or any other house, at such time as he shall be abiding in his royall person, viz. (within edifices, courts, places, gardens, orchards, or houses within the porters ward of any of the house or houses aboue rehearsed, or within any gardens, pryuie walkes, orchards, tilt-yards, woodyards, tenice playes, cocke fights, bowling allies, neare adioyning to anie of the houses aboue rehearsed, and being part of the same, or within two hundred fwt of the standard, of anie outward gate or gates of anie of the houses aboue rehearsed, commonly vsed for passage out or from anie of the house or houses aboue specified) shalbe taken by the Coroner of the houshold of the King or his heires, without adioyning of any other Coroner of any other shire, by the oths of xij. or more of the yeomen Officers of the Kings &c. houshold, returned by the two Clerkes Comptrollers, the Clerkes of the Checke, Clerks Marshall, or one of them for the time being, of the foresaid houshold, to whom the saide Coroner shal direct his Precept (which Coroner &c. shalbe assigned by the lord Steward for the time being.) And the said Coroner shall from time to time for euer without delay, certifie vnder his seale, and the seales of such persons as shalbe so sworne before him, all such Inquisitions, Indictments, and Offises, vpon the view of all dead bodies which shall be slaine within anie of the Kings palaces or houses, or other house aforesaid, before the said Lord Steward, and in his absence before the Treasurer, Comptroller, and Steward of the Marshalsey, or before two of them, whereof the said Steward of the Marshalsey to be one. And such Inquisitions and Offices so certified, shall be taken as good to all intents, as any Inquisition taken vpon the view of the bodie of any person being dead, by any Coroner of anie countie of this Realme, hath beene, or shall be adiudged.

Inquirie if a man be slaine within the Kings house and verge.

St. 33. H. 8. 12

18 Whereas the foresaid Statute of 28. Ed. 1. hath ordained, That if the death of a man doth chaunce in anie Countie where the Kings house is, and within the Verge, the Coroner of the same countie shall be commanded with the Coroner of the Kings house to execute his office, and to inroll it. But if a murder or manslaughter be found within the countie of Middlesex within the Verge, by an Inquisition taken before one which is then both one of the Coroners of the countie of Middlesex, and also Coroner of the Kings house, and then and there one is indicted of the same murder or manslaughter, this is a good indictment: for the intent and meaning of the said Statute 28. Ed. 1. is performed, though not by two persons, yet by one man hauing two offices, and also the mischiefe recited in the said Act, is auoyded: for though the Court doth remoue, yet the Coroner of the County may proceed.

One man Coroner of the Kings house, and of the countie.

St. 28. Ed. 1. 3

Co. lib. 4. 46

Who

Who ſhall be Iudge of Treaſon and Felony.

HAuing written at large of Treaſons and Felonies, and ſhewed what ſorts, and how many of either of them there be, and which of thoſe were delivered vs by the common law, and which ordained by ſtatute: And declared who be principals, and who be acceſſories in the ſaide crimes: how the offendors therein, vpon a pricke and guilt of conſcience, doe ofttimes breake priſon and indevor to eſcape: and how by Hue and cry, and other meanes they be apprehended, and brought to be tried by the iuſtice of the law: how they be accuſed by Appeales or Indictments: in what ſort they ſhalbe reſtrained & kept ſub cuſtodia legis, in priſon, or by mainprize, or bail, vntil they haue anſwerd their ſaid offences: And alſo hauing expreſſed what pleas the partie accuſed hath to plead for himſelfe, or other helps to defend himſelfe: by whom & what meanes thoſe pleas ſhall be examined, and what fauours be affourded him in the triall therof: and what iudgement, execution, & forfeitures the law doth inflict vpon thoſe that in contempt of her do commit the ſaid capitall and moſt grieuous offence: And further, hauing dilated how a true man being vpon malice, & falſely charged with felony by an Appeale, or Indictment, ſhal, in ſome ſatisfaction of his diſcredit & loſſes, recouer damages againſt the appellant, his abettors, or the conſpirators: and hauing laid open the authority & duty of the Coroner, who is a moſt antient officer of truſt in this realme, and a ſpeciall preſeruer of the peace of the King and the kingdome; I am now laſtly to write who ſhal be Iudge in the foreſaid treaſons and felonies, and ſhall inflict punithment vpon euery tranſgreſſor of the ſaid lawes according to his deſert. Wherein is to be conſidered, that the dead letter of the common or ſtatute law, cannot be that iudge, to inquire of felons, examine them, commit them to priſon, indict them, arraigne them, allow them their lawfull triall, examine their cauſes, & yelde them iuſtice according to their ſeuerall demerits by acquitall, or cõdemnation: but it muſt be Lex loquens, viz. That Iudge muſt be a man of learning & vprightneſſe, which by his mouth will ſpeake and attribute to euery perſon, that which the wiſedome & integritie of his heart doth conceiue to be iuſt, lawfull, and due vnto them. And though that Iudge ought ſo to be countenanced and protected by the regall authoritie, that he ſhall not need to feare the face of anie man for doing of iuſtice, and ſhalbe enabled to cruſh and ſuppreſſe all offences

within

The king can not be Iudge in Treaſon or Felonie.

within his iuriſdiction; yet the king himſelfe can not be that Iudge, nor ſit in iudgement in cauſes of treaſon or felonie, becauſe he is one of the parties to the iudgement: for all treaſons and felonies be done, and be ſuppoſed to be done contrarie to the peace, crowne, and dignitie of the king. And further, the eſcheats and other forfeitures of lands, leaſes, goods, and cattels, which do come by the attainder of any perſon of treaſon or felonie, do for the moſt part by the law accrue to the king: And ſo if the king might be Iudge, he ſhould be Iudge in his owne cauſe, which Ius gentium doth not permit. But the king by his Commiſſion may commit that authoritie to others, who may iudge betweene him and the ſuppoſed offendor. And the king ought to make choice of ſuch a man to be Iudge as is wiſe, & doth feare God, who hath trueth in his mouth, and no couetouſnes in his heart, who will neither decline from the troden path of iuſtice, to the right hand nor to the left, for the hope of proſperitie, or feare of aduerſitie, nor will draw the Kings ſword to reuenge his owne wrongs; who will denie iuſtice to none, neither himſelfe will expect or take reward of anie; who will freely licence all perſons to proſecute their right, giue full eare to the widowes complaint, further the cauſe of the orphan and fatherleſſe, and ſuffer none that he can helpe to receiue wrong; who will not feare the countenance of the mightie, nor diſdaine the baſeneſſe of the poore, whom neither hatred, fauor, or priuat affection will moue, but without reſpect of perſons will yeld to each wight, that which his cauſe requireth; who will remember, and neuer forget, that God hath endowed him with knowledge and vnderſtanding, that he hath made a couenant with him, to ſhew him what true iuſtice and iudgement is, that all his actions be continually in Gods ſight, and that euerie moment from heauen the King of kings doth behold them: And finally, who duly reſpecting both the Commiſſions which hee hath receiued from God and his prince, will ſo indifferently temper iuſtice with mercie towards the poore priſoner ſtanding trembling before him at the barre, as hee will hope for mercie when himſelfe ſhall make his laſt and great account before the God of iuſtice and mercie.

what ſort of men ought to be Iudges.

Eccleſiaſt. 17.

2 Whereas diuers auntient Prerogatiues and Authorities of iuſtice, appertaining to the Crowne of this Realme, were ſeuered and taken from the ſame by ſundry gifts of the Kings Progenitors, kings of this Realme, to the great diminution of the royall eſtate of the ſame, and to the hinderance and delay of iuſtice: for the reformation whereof, by a ſtatute made Anno 27. H. 8. it was enacted, That no perſon or perſons, of what eſtate, condition, or degree ſoeuer they be, ſhall haue any power or authoritie to make anie Iuſtices of Eyre, Iuſtices of Aſſiſe, Iuſtices of Peace, or Iuſtices of Gaole deliuerie, but that all ſuch Officers and Miniſters, ſhall be made by Letters Patents, vnder the Kings great Seale, in the name, and by authoritie of the king and his heires, kings of this Realme, in all Shires, Counties, Counties Palantine, and other places of this Realme, Wales, and the Marches of the ſame, or in anie other his dominions, at their pleaſure and wills, in ſuch maner and forme, as Iuſtices in Eyre, &c. be commonly made in euerie Shire of this Realme: Any graunts, vſages, Acts of Parliament, or other thing notwithſtanding.

27. H. 8. 25

None ſhall make Iuſtices but the king.

3 When a Peere of the Realme, and Lord of the Parliament, is to be arraigned vpon any Treaſon or Felonie, whereof hee is indicted, and whereunto he hath pleaded not guiltie, the King by his Letters Patents ſhall aſſigne ſome

1. H. 4. 2.
13. H. 4. 13.
10. Ed. 4. 6.

The Iudge vpon the arraignement of a Peere of the realme.

ſome noble and ſage Lord of the Parliament, to be high Steward of England for the day of his arraignement, who before the ſame day ſhall make a Precept to his Serieant at Armes, that is appointed to ſerue him during the time of his Commiſſion, to warne to appeare before him eighteene or twenty lords of the Parliament, vpon the ſame day, &c. S. Triall 2.

4 Where Treaſons, Miſpriſions of Treaſons, Murders, Manſlaughters, and other malitious ſtrikings, by reaſon whereof blod hath beene ſhed, againſt the kings peace, were often committed within the limits of the Kings palace, or houſe, or other houſes where his Maieſtie was abiding in his royall perſon: which offences when they be done, be beſt knowne by his Highneſſe Officers of his houſhold, and by his ſeruants of his Checke roll: and if his Maieſty ſhal happen to remoue from ſuch his palace, or houſe, or other houſe wher ſuch offences were done, before the triall and determination thereof, then ſuch offences might not lawfully be tried, heard, and determined by and before the ſaid Officers, but be remitted to be tried and determined by the order of the Common law, by reaſon whereof the puniſhment of the ſaide offendors, in ſuch caſes, hath beene long time delayed, and ſometime their offences forgotten, and not remembred, and ſo they eſcaped vnpuniſhed: For the redreſſe whereof, by a Statute made Anno 33. H. 8. it was enacted, That all Treaſons, Miſpriſions of Treaſons, Murders, Manſlaughters, Bloudſheds, and other malicious ſtrikings, by reaſon whereof blod ſhall be ſhed, againſt the Kings peace, which ſhall be done within anie the palaces or houſes of the King or his heires, or within anie other houſe or houſes, at ſuch time as his Maieſtie ſhall be then abiding in his royall perſon, ſhall be inquired of, tried, heard, and determined within anie of the Kings houſes, or other houſe where his Maieſtie ſhalbe abiding, before the Lord Steward of the Kings houſhold, and in his abſence, before the Treaſorer, and Comptroller of the Kings houſholde, and Steward of the Marſhalſey for the time being, or two of them, whereof the Steward of the Marſhalſey to be one, by vertue of their offices, without anie Commiſſion, or other authoritie to them giuen. And whether the King ſhall be remoued from the houſe where ſuch offences ſhall be done, or not, before they be inquired of, heard, and determined, yet ſuch offences ſhall be inquired of, tried, heard, and determined before the Kings Officers of his houſhold before named, or two of them, by the Inquiſition and verdict of his houſhold ſeruants in his Checke roll, at ſuch palace or houſe where his Maieſtie ſhall be at anie time abiding, in manner and forme as is hereafter expreſſed. The two Clerks, Comptrollers, Clerks of the Checke, and Clerks Marſhals for the time being, of the kings houſhold, or one of them vpon a Precept to them, or any of them made by the Lord Steward, or in his abſence, by the ſaid Treaſorer and Comptroller of the kings houſhold, and the ſaid Steward of the Marſhalſey, or by two of them, whereof the ſaide Steward of the Marſhalſey to be one, ſhal haue power to ſommon, warne, and returne the names of twentie foure perſons, being yeomen officers of the kings ſaid houſhold in the ſaid Checke roll, to inquire of ſuch treaſons, miſpriſions of treaſons, murders, manſlaughters, and other malicious ſtrikings, by reaſon whereof blod ſhall be ſhed, againſt the kings peace, before the ſaid Lord Steward, and in his abſence before the ſaid Treaſorer, Comptroller, & Steward of the Marſhalſey, or before two of them at the leaſt, whereof the Steward to be one. And it ſhalbe lawfull to the ſaid Lord Steward, and in his abſence, to the ſaid Treaſorer, Comptroller, and Steward of the Marſhalſey aforeſaid, or

two

28. 33. H. 8. 12

Iudge of treaſons and felonies committed in the K. houſe.

two of them, whereof the ſaid Steward to be one, before whom ſuch Returns ſhall be ſo made as is aforeſaide, to cauſe ſuch number of the ſaide foure and twentie perſons ſo returned, aboue the number of twelue perſons, as to him or them ſhall ſeeme expedient, to inquire of ſuch treaſons, miſpriſions of treaſons, murders, manſlaughters, or other malitious ſtrikings, by reaſon whereof blood ſhall be ſhed, againſt the kings peace, within the ſaid Palaces, or other the ſaid houſes, at any time committed. And if any perſon or perſons be indicted by the ſaid Jury ſo ſworne before them as is aforeſaid, or by Inquiſition before the Coroner of the ſaid houſhold, and certified before the ſaid Lord Steward, or in his abſence before the ſaid Treaſorer, Comptroller, and Steward of the Marſhalſey, or two of them, whereof the ſaid ſteward of the Marſhalſey to be one, Then immediatly the ſaid Lord Steward, or &c. Treaſorer, Comptroller, and Steward of the Marſhalſey, or two of them, whereof &c. before whom the ſaid preſentment, inquiſition, or indictment ſhall be ſo found, or certified by the ſaid Coroner, ſhall arraigne before them euerie ſuch perſon ſo indicted, according to the courſe of the Common law, and forthwith after iſſue ioyned betweene the king and the priſoner ſo arraigned, the ſame day and place, or any other, ſhall make another Precept to the ſaid Clerks Comptrollers, Clerkes of the Checke, and Clerks Marſhalls of the ſaid houſhold, or to one of them, to ſommon and returne one Jurie of foure and twentie perſons, to appeare before the ſaide Lord Steward, or &c. Treaſorer, Comptroller, and Steward of the Marſhalſey, or two of them, whereof the ſaide Steward of the Marſhalſey to be one, at ſuch day, time, and place, and vpon ſuch paine as ſhalbe then limited, of the Serieants and Gentlemen Officers of the Kings chamber, and of the ſaid houſhold, which ſhal take wages by the kings Checke roll. And the ſaid Steward, or &c. Treaſorer, Comptroller, and Steward of the ſaid Marſhalſey, or two of them, whereof the ſaid Steward to be one, before whom ſuch Jury ſhalbe ſo returned, ſhall cauſe twelue of the ſame Jury to be ſworne, truely to trie betweene the king and ſuch perſon as ſhalbe ſo indicted and arraigned of ſuch treaſons, miſpriſions of treaſons, murthers, manſlaughters, and other malitious ſtrikings, by reaſon whereof blood ſhall be ſhed, againſt the kings peace, or anie of them. And if anie ſuch perſon or perſons ſo arraigned be found guiltie of anie treaſon, miſpriſion of treaſon, murders, or manſlaughters, then he ſhall haue iudgement of life and member, and ſuffer ſuch paines of death, and ſhall forfeit all their mannors, lands, tenements, goods, and cattells, in like manner as if the ſame perſon and perſons had beene found guiltie of anie the ſaid offences by the order of the Common law, without the benefit of Clergie, or Sanctuarie. Prouided alwaies, that the triall of Peeres for anie offence before mentioned ſhall be as it hath beene vſed in times paſt.

Iudges of conſpiracie in the Kings houſe.

5 By the ſtatute made Anno 3. H. 7. it was ordained, That the Steward, Treaſorer, and Comptroller of the Kings houſe for the time being, or one of them, ſhall haue authority to inquire by twelue ſad men, and diſcreet perſons, of the Checke roll of the kings houſhold, if anie ſeruant admitted to be his ſeruant ſworne, and his name put in the Checke roll of his houſhold, whatſoeuer he be (ſeruing in anie office or roome reputed and taken vnder the eſtate of a Lord) make anie confederacies, compaſſings, conſpiracies, or imaginations, with any perſon or perſons, to deſtroy or murder the king or any Lord of this Realme, or any other perſon ſworne to the Kings Counſell, Steward, Treaſorer, or Comptroller of the Kings houſe: And if it be found before the ſaid ſte-

ward

Stat. 3. H. 7. c. 14

ward for the time being, by the said xij. sad men, that any such of the Kings servants, as is abouesaid, hath conspired, compassed, conspired, or imagined, as is abouesaid, he so found by the inquirie, shalbe put thereupon to answer. And the Steward, Treasorer, and Comptroller, or two of them, haue power to determine the same matter according to the law: and if he put him in triall, then it shalbe tried by other xij. sad men of the said houshold. And if such misdoers shal be found guilty by confession or otherwise, the said offence shall be iudged felonie. S. Felonie by Stat. 1.

Co. li 4 47. 6 The Iustices of the Kings Bench, the Iustices of Oyer and Terminer, Iustices of Gaole delinerie, and Iustices of Peace, haue power to inquire, heare, and determine al murders and felonies within the Verge, for that their authoritie and iurisdiction is generall through the whole county, and so it hath bene alwayes vsed. Iudges within the Verge.

7 The Iustices of the Kings Bench, without hauing Commission, may heare and determine all maner of Treasons and Felonies. And by the Stat. of Anno. 35. H. 8. & Anno 5. Ed. 6. it is enacted, That all manner of offences being alreadie made or declared, or hereafter to be made or declared, by any laws and statutes of this Realme, to be Treasons, Misprisions of Treasons, or concealments of Treasons, & done, perpetrated, or committed, or hereafter to bee done, perpetrated, or committed by any person or persons, out of this Realme of England, shall bee inquired of, heard, and determined before the Kings Iustices of his Bench, for Pleas to be holden before himselfe, by good and lawful men of the same Shire where the sayd Bench shall sit, and be kept, or else before such Commissioners, and in such Shire of this Realme, as shall bee assigned by the Kings Commission, and by good and lawful men of the same Shire, in like maner and forme to al intents & purposes, as if such Treasons, Misprisions of Treasons, and concealments of Treasons, had bin done and committed within the same Shire where they shalbe so inquired of, heard, and determined. Prouided alwaies, that if any Peeres of this Realme shalbe indicted of any such Treasons, or other offences, then they shal haue their trial by their Peeres, as heretofore hath beene accustomed. Iudges of the K. Bench. St. 35. H. 8. 2. St. 5. E. 6. 11. Iudges of Treasons committed beyond the Sea. Dy. fo. 287. & 298.

8 By the Stat. intituled De finibus, made Anno 27. Ed. 1. and also by the stat. of Anno 4. E. 3. it is ordayned, That good and discreet persons (other than of the Benches, if they may be found sufficient) shalbe assigned in al the shires of England, to take Assises, Iuries, & Certifications, and to deliuer the gaoles. And the Iu. assigned to deliuer the gaoles, shal haue power to deliuer the same gaoles of those that shalbe indicted before the gardeins of ỹ peace. And the said gardeins shal send their indictments before the Iu. And they shall haue authority to inquire of Shirifs, Gaolers, & others, in whose ward such indicted persons shalbe, if they make deliuerance, or let to mainprise any so indicted which be not mainpernable, & to punish the said Shiriffes, Gaolers, and others offending against this act. And by the stat. of An. 3. H. 7. it is enacted, That the wife or heire of any person murdered, or slaine, as cas shall require, may commence their appeale in proper person, at any time within the yeare after the felony done, before the Shirife & Corroners where the said felony and murder was done, or before the King in his Bench, or Iustices of Gaole delinery. Iudges of gaole delinery St. 27. E. 1. 2. St. 4. E. 3. 2. St. 3. H 7. 1. Iudges in appeale of murder or manslaughter.

9 To the intent to inable the Iust. of Nisi prius to give iudgement of such

Iudges of Niſi prius. Iudges in felony & treaſon.

perſons as be either attainted or acquit of treaſon or felony, by a ſtat. made an. 14.H.6. it was eſtabliſhed, That the Iuſt. before whom Enqueſts, Inquiſitions, and Iuries ſhalbe taken by the K. writ of Niſi prius, according to the forme of the ſtat. thereof made, ſhall haue power of all the caſes of felony, and of treaſon, to giue iudgement. Though this ſtat. of 14.H.6. doth giue authoritie to Iuſtices of Niſi prius to giue iudgement as wel vpon acquital, as vpon attainder of treaſon, or felonie, notwithſtanding if in an Appeale the defendant be acquit before them, they cannot award damages againſt the plaintife, nor inquire of abettors: for their power by this ſtat. extendeth but to treaſon and felony only, wherof they may giue iudgement, and of nothing elſe: for the awarding of damages, and inquiring of abettors, doth yet remaine as it was at the common law. St. 14.H.6.11. 10.Ed.4.14.

Awarding of damages, and inquiring of abettors.

Iudges of murders by ſpeciall commiſſion.

10 By the ſtat. of Anno 33.H.8. it is ordained, That if any perſon or perſons being examined before the K. Counſell, or three of them, vpon any maner of murders, do confeſſe any ſuch ofences, or that the ſaide Counſell, or three of them, vpon ſuch examination ſhall thinke any perſon ſo examined, to be vehemently ſuſpected of any murder, then in euery ſuch caſe, by the kings commandement, the K. commiſſion of Oyer and Terminer, vnder the great ſeale, ſhal be made to ſuch perſons, & to ſuch ſhires, or places, as ſhall be appointed by his highneſſe, for the ſpeedy trial, conviction, or deliuerãce of ſuch offendors, which Commiſſioners ſhall haue authority to inquire, heare, and determine all ſuch murders, within the ſhire, and places limited by their commiſſion, by ſuch good and lawfull perſons as ſhall be returned before them by the Shirife, his miniſter, or other hauing power to returne writs & proces for that purpoſe in whatſoeuer other ſhire or place within the K. dominions, or without, ſuch offences were committed. But Pẽrs of the realm being indicted of the ſaid offence, ſhal be tried by their Pẽrs. This ſtat. was alſo made for the triall of treaſons, and miſpriſion of treaſons, by ſpecial commiſſion. But by the ſtat. of an. 1. & 2. P. & M. it was enacted, That al trialls to be made for any treaſons, ſhalbe only vſed according to the courſe of the common law. St. 33.H.8.23 St. 1 & 2. P. & M. 10.

11 Where Traitors, Pirats, Thẽues, Robbers, Murderers, and confederators vpon the Sea, many times eſcaped vnpuniſhed, becauſe the tryall of their offences hath heretofore bin ordered, iudged, & determined before the Admiral, or his Lieutenant, or Commiſſary, after the courſe of the ciuile lawes, the nature wherof is, that before any iudgement of death can be giuen againſt the offendors, either they muſt plainly confeſſe their offences (which they wil neuer doe without torture or paines) or elſe their offences muſt be ſo plainely and directly proued by witneſſes indifferent, ſuch as ſaw their offences committed, which cannot bee gotten but by chaunce at few times, becauſe ſuch offendors commit their offences vpon the Sea, and many times murder and kil ſuch perſons being in the ſhip or boat where they commit their offences, which ſhould be witneſſe againſt them in that behalfe: and alſo ſuch as ſhould beare witneſſe, be commonly Mariners, and ſhipmen, which, becauſe of their often voyages and paſſages vpon the Sea, depart without long tarrying and protracting of time, to the great coſts and charges as well of the King, as ſuch as ſhould purſue ſuch offendors: For reformation whereof, by a ſtatute made an. 28.H.8. it was enacted, That all Treaſons, Felonies, Robberies, Murders, and Confederacies, commited in, or vpon the Sea, or in any other Hauen, Riuer, Creeke, or place where the Admirall or Admiralls haue, or pretend St. 28.H.8.15

to

to haue power, authoritie, or iuriſdiction, ſhalbe inquired, tried, heard, determined, and iudged in ſuch Shires and places in the Realme as ſhalbe limited by the Kings Commiſſion or Commiſſions, to be directed for the ſame, in like forme and condition, as if any ſuch offence or offences had bene committed or done in and vpon the land: And ſuch Commiſſions ſhalbe had vnder the great Seale, directed to the Admirall or Admiralls, or to his or their Lieutenant, Deputie & deputies, & to three or foure other ſuch ſubſtantial perſons as ſhalbe named or appointed by the Lord Chauncellor for the time being, from time to time, and as oft as need ſhall require, to heare and determine ſuch offences, after the courſe of the common lawes of this land vſed for Treaſons, Felonies, Robberies, Murders, and Confederacies of the ſame, done and committed vpon the land within the Realme. And ſuch perſons to whom ſuch Commiſſion or Commiſſions ſhall bee directed, or foure of them at the leaſt, ſhall haue authoritie to inquire of ſuch offences, and euerie of them, by the oathes of twelue good and lawfull inhabitants of the Shire limited in their Commiſſion, in ſuch manner and forme, as if ſuch offences had beene committed vpon the land within the ſame Shire. And euerie Indictment found and preſented before ſuch Commiſſioners, of any Treaſons, Felonies, Robberies, Murders, Manſlaughters, or ſuch other offences committed or done in or vpon the Seas, or in, or vpon any Riuer, Hauen, or Creeke, ſhall be good and effectuall in the law. And if any perſon or perſons happen to be indicted for any ſuch offence done vpon the Seas, or in any other place aboue limited, then ſuch order, Proces, Iudgement, and execution ſhalbe vſed, had, done, and made, to, and againſt euery ſuch perſon and perſons ſo being indicted, as againſt traitors, felons, & murderers, for treaſon, felony, robbery, murder, or other ſuch offences done vpon the land, as by the law of this realm is accuſtomed. And the trial of ſuch offence or offences, if it be denied by the offendor or offendors, ſhalbe had by xij. lawful men inhabited in the ſhire limited in ſuch commiſſion, which ſhal be directed as is aforeſaid, & no challenge to be had for the Hundred. And ſuch as ſhalbe conuict of any ſuch offence or offences, by verdict, confeſſion, or proces by authority of any ſuch commiſſion, ſhall haue and ſuffer ſuch pains of death, loſſes of lands, goods, and cattels, as if they had bin conuicted of any treaſons, felonies, robberies, or other the ſaid offences done vpon the land, without benefit of Clergie, or Sanctuarie. Prouided alwayes, that this act ſhall not extend, or be preiudiciall to any perſon or perſons, for taking of any victuals, gables, ropes, anchors, or sayles, which any ſuch perſon or perſons compelled by neceſſitie, taketh of, or in any ſhip which may conueniently ſpare the ſame, ſo the ſame perſon or perſons pay out of hand for the ſame victuall, gables, ropes, anchors, or sayles, mony, or mony worth, to the value of the thing ſo taken, or doe deliuer for the ſame a ſufficient bill obligatory, to bee paid in forme following, viz. if the taking of the ſame things be on this ſide the ſtraits of Marrok, then to bee payd within foure monethes: and if beyond the ſayde Straits, then to be paid within twelue monethes next enſuing the making of the ſayde bill: And that the makers of the ſayd bils well and truely pay the ſame debt, at the day to be limited within the ſaid bills. Prouided alwayes, that whenſoeuer any ſuch Commiſſion for the puniſhment of the offences aforeſayde, or of any of them, ſhall be directed or ſent to any place within the iuriſdiction of the fiue Ports, that then euerie ſuch commiſſion, ſhall bee directed vnto the Lord Warden of the ſayd Ports for the time being, or to his deputy, and vnto three or foure ſuch other perſons as the Lord Chauncellor for the time being ſhall appoint. And that when any Commiſſion ſhalbe directed vnto the fiue Ports

Iudges in piracie where the Admirall hath iuriſdiction.

No challenge for the hundred.

Taking things vpon neceſſitie.

Commiſſions directed into the fiue ports.

for the inquisition and tryall of any of the offences expressed in this Act, that euerie such inquisition and tryall to be had by vertue of such Commission, shall be made and had by the inhabitants in the said 5. ports, or the members thereof: Any thing in this act to the contrarie notwithstanding. So much of this stat. as concerneth the triall of treasons, is altered by the stat. of Anno 1. & 2. P. & M. 10. and the same made triable onely by the course of the common law.

Iust. of peace Iudges in felonie.

12 The Iustices of peace of euery county by vertue of the K. commission to them directed, and by force of the stat. of Anno 18. Ed. 3. be Iudges in felonie, and haue authority to heare and determine felonies: the words of which stat. be these, viz. Two or three of the most worthy men of counties, shalbe assigned keepers of the peace by the K. commission: and at what time need shall bee, the same, with other wise and learned in the law, shalbe appointed by the K. commission, to heare and determine felonies, and trespasses done against the peace in the same county, and to execute punishment reasonably, according to Law, reason, & the manner of the fact. And the words of the kings commission which doth authorize Iustices of peace to be Iudges of Felony, and to heare and determine felonies, amongst others, be these, viz. Iacobus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor &c. Prædilectis A. B. C. D. E. F. &c. Salutem. Sciatis quod assignauimus vos, & quoslibet duos, vel plures vestrũ (Quorum aliquem vestrum A. B. C. D. vnum esse volumus) Iusticiarios nostros, ad pacem nostram in comitatu nostro Buckingham conseruandum, & ad inquirendum per sacramentum proborum & legalium hominum de comitatu prædicto (per quos rei veritas melius sciri poterit) de omnibus & omnimodis felonijs, transgressionibus &c. ac de omnibus & singulis alijs malefactis & offensis de quibus Iusticiarij nostri pacis legitimè inquirere possunt aut debent per quoscunque aut qualitercunque in Comitatu prædicto factis siue perpetratis, Vel quæ in posterum ibidem fieri, vel attemptari contigerit, &c. Et ad omnia & singula Felonias &c. indictamenta prædicta, ceteraque omnia & singula præmissa secundum leges & statuta Regni nostri Angliæ (prout in huiusmodi casu fieri consueuit & debuit) audiendum & terminandum. And though it doth plainely appeare by the words of the foresaid Commission, that the King doth giue authoritie to Iustices of Peace, to inquire of, heare, and determine all manner of Felonies, viz. as well of such as be made Felonies by Statute, as of such offences as were Felonies by the Common law: yet because there hath beene a scruple and question moued by some, that the foresaid Statute of Anno 18. Ed. 3. did meane, and was to bee expounded to giue authoritie to Iustices of Peace, to inquire of, heare, and determine those felonies onely which were at the time of the making of that Statute, felonies, viz. That were Felonies by the Common law, and not to giue them authoritie to inquire of, heare, and determine those offences as felonies, which were made felonies by seuerall Statutes ordained sithence that time, and that the Kings Commission authorised by that Statute, did giue them no further authoritie than that Statute meant: Therefore not to adde to the law, but to satisfie euerie reader, and to make that thing more plaine and perspicuous to all men, which to some did seeme doubtfull, the makers of the stat. of An. 8. El. 3. touching the transporting of shæpe, and of the stat. of An. 25. H. 8. 6. ordained against buggery, and of the stat. of Anñ 18. H. 6. 19. established to punish Souldiers that depart from their Captains without licence, and of the stat. of an. 39. El. 4. & An. 1. Iac. 7. touching dangerous and incorrigible rogues, and of the stat. prouided an. 39. El. 17. against wandering souldiers and mariners, and

The words of the commissi on of the peace.

St. 18. E. 3. 2.

and of the ſtat. of an. 22. H. 8. 11. eſtabliſhed againſt the cutting downe of powdike, and of the ſtat. of an. 43. El. 13. enacted againſt the carrying away of any perſons againſt their wils out of Cumberland, Northumberland, Weſtmerland, or the Biſhoprike of Durham, did by ſpeciall words ordaine, that the J. of the peace of the counties wherein any of the foreſayd ſeuerall offences were committed, ſhould haue authoritie at their generall Quarter Seſſions, to inquire of, heare, and determine the ſaid offences. And the like authoritie was giuen by the ſaid ſeuerall ſtat. to the Juſt. of Aſſiſe, and Juſt. of Gaole deliuerie, to inquire of, heare, and determine the ſaid offences in the counties where the ſame were committed within their ſeuerall commiſſions. And by the ſtat. of an 1. E. 4. it was ordained, That the J. of peace of euery county, ſhall haue authoritie and power to arraigne and deliuer all perſon and perſons indicted or preſented before the Sherifes, Vndercheriſs, their Clerks, Bailifs, or Miniſters, or any of them, in their Turnes or Lawdayes. And as of other felonies, ſo J. of peace may inquire of murder, becauſe wilfull murder is felony. But Juſt. of peace cannot inquire of treaſon, for neither the before mentioned ſtat. of 18. E. 3. nor the words of their commiſſion, do authoriſe them ſo to do.

8. H. 7. 5. 5. E. 6. Dy. 96. 9. H. 4. 1.

Murder. Treaſon.

Bracton de cor cap. 35. 2. R. 3. 10.

13 There be ſome that haue libertie of Soc and Sac, Tol and Them, Infangthæfe and Outfangthæfe: theſe in their own courts may giue iudgement of him who is found within their liberty poſſeſſed of any manifeſt theft, as if he be hand hauing, and back bearing, and that Sathaber (viz. he whoſe the goods be) do purſue him: for vnleſſe he be in poſſeſſion of the goods (though another doth purſue him as a thæfe) yet that Court, Hundred, or Wapentake, cannot hold plea of ſuch a theft, nor make inquiry by the countrey, whether ſuch a man which was not poſſeſſed of the goods, be culpable, or not. Neither ſhal any wage battell without poſſeſſion. It is called Infangthæfe, where a thæfe is taken poſſeſſed of goods ſtolne within any ſuch Manor or liberty, who is commorant and dwelling within the ſame liberty, and one of the ſaid Lords owne people. Outfangthæfe, is a thæfe that is a ſtraunger, comming from ſome other place into the Manor of the Lord who hath ſuch a liberty, and is there taken with the maneure. And yet he that hath ſuch a liberty, cannot fetch one of his owne people who hath committed larcenie out of his liberty, and bring him into his libertie, and iudge him there according to his liberty; for euery perſon muſt receiue the puniſhment of the law where he hath offended the law: But he may giue iudgement as wel againſt his own people, as againſt ſtrangers committing larcenie, that be taken within his liberty. And in this liberty of Infangthæfe and Outfangthæfe, and in waife and ſtray, and wreck of the ſea, a man may preſcribe, but ſo he cannot do in goods of felons and fugitiues, for they do belong to the Crowne, and cannot paſſe without the Kings grant.

Kel. fol. 150.

The Lord of a Manor Judge in felonie.

Infangthæfe.

Outfangthæf.

4. Ed 3. 15. 14. H. 4. 15.

14 The cuſtome of ſome countrey is ſuch, that if one hath committed burglarie, or other felony, and he be purſued by hue and crie from towne to town, and ſo taken flying, he muſt be beheaded in the preſence of the inhabitants of foure townes, and ſo by the vſage of that countrey he is accounted a felon: And this muſt be recorded in the Corroners roll, and after the corroner muſt preſent it before the Juſtices, and they wil adiudge him a felon. And ſo he muſt be firſt put to death, and after iudged a felon.

Fl. Preſcription 65.

A felon firſt executed, and then iudged.

FINIS.

The generall Titles of this Booke.

1 *Menace, Assault, Batterie, Imprisonment, Maiheming.*

2 *Riots, Routs, vnlawfull and rebellious Assemblies.*

3 *Force, and Forcible Entries, and Forcible detaining of possessions.*

4 *Forgerie.*

5 *Periurie, and Subornation of Witnesse.*

6 *Maintenance, Champertie, Embracerie.*

7 *Deceit, Couin, Colluſion, Fraud.*

8 *Extortion, Exaction.*

9 *Oppreſsion.*

10 *Treaſons.*

11 *Homicides.*

12 *Felonies by the common Law.*

13 *Felonies by Statute.*

14 *Principall and Acceſſorie.*

15 *Breaking of Priſon, and Reſcous.*

16 *Eſcapes of Felons.*

17 *Purſute by Huy and Crie.*

The generall Titles of this Booke.

18 *Appeales of Felony.*
19 *Indictments.*
20 *Mainprise and Bayle.*
21 *Confession of the offence.*
22 *Approuer.*
23 *Sanctuarie and Abiuration.*
24 *Pleading not guilty.*
25 *Triall of the plea of not guilty by Battell.*
26 *Triall by Peeres.*
27 *Triall by the Countrey.*
28 *Challenges.*
29 *Euidence.*
30 *The Verdict.*
31 *Clergie.*
32 *The Kings Pardon.*
33 *Standing mute, or answering indirectly.*
34 *Iudgement and Execution.*
35 *Forfeitures for Treason or Felony.*
36 *Corruption of Blood.*
37 *Restitution of stolne goods.*
38 *Dammages in an Appeale.*
39 *A Writ of Conspiracie.*
40 *The Coroner, and his authority and dutie in Felonies.*
41 *Who shall be Iudge in Treason and Felonie.*

A briefe effect of euery Braunch or Chapter in this Treatiſe.

Menace, Aſſault, Batterie, Impriſonment, Maiheming. *Fol.* 1.

1 THe euill fruits of menaces.

Menacers ſhall be impriſoned.

The enormitie of rebelling and defaming.

2 The differences of Menacing, Aſſault, and Batterie.

3 The declaration in treſpas of menacing.

A rebuke accounted a Menace or Aſſault.

4 Menacing a ſeruant, whereby he departeth out of ſeruice.

5 Menacing a tenant, whereby he departeth from his tenancie.

Menacing of a Lords Freeholder.

6 Menacing which is iuſtifiable.

7 Menacing bygoing or riding armed.

8 Wearing of a priuie coat a Menace.

9 Labourers ſhall weare no weapons, to preuent Menaces.

10 Aſſurances made by Menacs.

11 What is an Aſſault.

What is a batterie.

12 Iuſtifying of beating in his own defence.

Barre in treſpas of Aſſault and Batterie.

13 Iuſtifying of beating in defence of others.

The maſters remedie for beating of his ſeruant.

14 Batterie in defence of his goods.

Batterie in defence of his land, leaſe, or way.

15 Battery in reſiſting of a Iuſtice of peace.

16 A Schoolemaſter beateth his Scholler.

17 A Maſter beateth his Prentice.

18 Beating of a man that is frãticke.

19 Beating of one that will not yeeld to arreſt.

20 Beating of a ſeruant departing out of ſeruice.

Beating of a Ward.

21 Commandement of Batterie.

22 Battery or hurting at ſome exerciſe or diſport.

23 Battery by whipping of a vagabond.

Puniſhments by the order of Law.

24 Battery for diſobeying of a writ or warrant.

25 Arreſting one in a Church that is doing diuine ſeruice.

26 Diſturbing of a Preacher in his Sermon.

27 Chiding in a Church or churchyard.

Smiting in a church or churchyard.

Drawing or ſmiting with a weapon in a Church or &c.

28 Drawing of blood within the kings

kings palace.

29 Assaulting one which commeth to the Parliament.

Assaulting the seruant of a Parliament man.

The liberty of the Clergy at a Conuocation house touching assaults.

30 Assaulting a Iudge or Iuror.

Striking in time or place of iustice.

31 Arresting by watchmen.

32 Trespas for a Batterie before Outlawrie.

33 A man first indicted for batterie, and after sued for the same.

34 What imprisonment is.

Voluntary consent no cause of imprisonment.

35 Imprisonment by the commandement of the king or his Iustices &c.

36 Imprisonment for notorious & grieuous offences.

37 Imprisonmēt for offences done *vi & armis*.

38 Imprisonment for Riots.

39 Imprisonment for holding land with force.

40 Imprisonment of one that is pursued by huy and cry.

41 Imprisonment of him that doth breake the peace.

Arresting of suspected persons.

42 Imprisoning of him that doth attempt to rob.

43 Assisting him to arrest that hath a warrant.

44 Breaking of a house to arrest, in what case lawfull.

45 The shirife doth arrest & doth not returne his writ.

46 Arresting vpon suspition of felony.

Causes of suspition of felony.

47 Arresting vpon doubt of Manslaughter.

48 A Iustice of peace his Warrant to arrest a felon.

49 Arresting of an offendor, and committing him to the Constable.

50 Imprisonment vntill he had made an Obligation.

51 The seruant not chargeable for the masters offence by imprisonment.

52 No imprisonment by force of a *Iuflicies*.

53 Imprisonment by force of a warrant vpon a *Supplicauit*.

54 Arresting him that would breake the peace.

55 Imprisoning of a seruant that doth assault his master.

56 In what cases imprisonment is lawfull, and in what not.

57 Imprisonment for offences done to the Iustices of the realme.

58 What is maiheming.

59 How manie sorts there bee of maiheming.

60 Examination of a maihem by the Iustices or Surgeons.

61 Where diuers appeales of maihem for one offence.

62 Principall & Accessarie in maihem.

63 Mainprise in an appeale of maihem.

64 Why maihem is supposed to be done feloniously.

65 Barres in an appeale of maihem.

66 Execution in an appeale of maihem.

67 An action of Trespas maintenable after an appeale of maihem.

68 The peace preserued, & affraies restrained by Iustices of Peace.

The commission of the peace.

69 The commission doth chiefely respect the peace.

Why they be called Iustices of the peace.

Binding suspected persons to their good behauior.

70 A Iustice of peace may take surety of the peace.

What the surety of the Peace is.

Certificat of a Recognisance.

The surety of good abearing.

71 For whom and against whom the suerty of Peace is to be granted.

72 Vpon what causes the surety of peace is to be granted.

73 Suretie of peace enioyned by word or writing.

74 The seruing of Proces for the peace.

A warrant of the peace.

Who may serue it without writing, and who without shewing it, and who not.

Refusing to obey the warrant.

75 To which Iustice of Peace the partie arrested is to bee brought.

76 A warrant to finde sureties to keepe the peace.

The partie must offer his sureties.

77 Surety of Peace doth dye with the king.

The Iustices authoritie dyeth with the king.

78 The sureties of the peace must be named.

79 Hee that is bound to the Peace must appeare at a day prefixed.

80 A *Supersedeas* for the peace.

81 Taking a Recognisance for the keeping of the peace.

Taking a Recognisance for the good abearing.

82 A Release of the suretie of Peace.

The parties release of the peace.

The Iustices Release of the Peace.

83 Causes of the breach of the peace or good abearing.

84 The Sheriffe, Constable, and seuerall other officers be conseruators of the Peace.

85 Euerie able person, when neede requireth, must be a conseruator of the Peace.

86 Menaces, Assaults, Batteries &c. in some cases are punishable in the Starre-chamber.

Riots, Routs, vnlawfull and Rebellious Assemblies.

Fol. 24.

1 The enormity of Riots.

Statutes ordained to preuent forces or Riots.

2 The Court of Star-chambers authority to punish Riots &c.

3 What is a Riot.

4 What is an vnlawfull assemblie.

5 What is a Rout,

Rout by wearing of armour.

6 Lawfull assemblies of three persons or more.

An assembly lawfully begun, doth end riotously.

7 Disturbing of Riotors.

8 The Iustices and Sheriffs &c. shal arrest Riotors.

Recording of a Riot.

9 Inquiry of a Riot by the Iustices &c.

A Precept to the Shirife to returne a Iury to inquire of a Riot.

The forme of an inquisition of a Riot.

10 Certifying of a Riot.

Trauerse of a Certificat.

11 Proces against offendors.

12 The forfeiture of Iustices, which doe not inquire of Riots.

13 A Commission to inquire of the Iustices &c. default.

14 Vpon the Commission the Coroner shall returne the Iurie.

What issues shall be returned vpon the

the Iurors.

15 Where the Shirife ſhall returne the Iury, and not the Coroner.

16 A Writ directed to inquire of Riots.

17 Riots ſhall be inquired of at the Kings coſts.

18 The puniſhment of Riotors.

19 Each man ſhal helpe to repreſſe Riots.

20 Baylifes of Franchiſes.

Riots in Cities & Towns corporat.

21 A Iury to inquire of Riots.

22 Maintenance whereby a Riot is not found.

23 What one Iuſtice of Peace may do alone in a Riot.

24 The Iuſtices muſt haue notice of a Riot.

25 The parties agreement no diſcharge of the inquiſition of a Riot.

26 What power of the countie the Iuſtices ſhall vſe to repreſſe Riots.

27 The Iuſtices record of a Riot, where no trauerſe thereunto.

28 The credit of the Iuſtices record.

Certificat of a Riot.

29 The proces againſt Riotors.

30 The penaltie for not executing of this ſtatute.

31 A trauerſe to an indictmēt of riot.

32 Twelue or aboue aſſembled to change lawes.

33 Practiſing to deſtroy Parkes, Ponds, Conduits, Common, or Way.

Deſtroying of Deere, Conies, Doue-houſes, fiſh.

Pulling down houſes, burning ſtacks of corne, &c.

34 Raiſing of vnlawfull aſſemblies by acts or words.

35 Relieuing them which bee aſſembled.

36 Vnlawful aſſemblies aboue two, and vnder twelue.

The remedy of the party grieued.

37 Raiſing of power to ſuppreſſe vnlawfull aſſembhies.

38 A Copiholder beeing required refuſeth to ſerue the king.

39 A farmer required refuſeth to ſerue.

40 Diſcloſing a commotion, wherin one is moued.

41 An able perſon required refuſeth to ſerue.

42 Attendance vpon a Lieutenant

43 The forme of the proclamation.

44 Hinderance of the proclamation.

45 Other mens rights ſaued.

46 Procuring others to offend.

47 Vnlawfull aſſemblies by fortie or aboue.

48 A Lieutenant ſhal not appoint a deputie.

49 Ayding of the offendor before the offence.

50 The attainder of thoſe offences no corruption of blood.

Force, and Forcible Entries. *Fol.* 34.

1 Vnlawfull force is an enemie to peace.

There ſhall be no forcible entry into lands.

2 The penalty of forcible entry into lands or benefices.

3 Holding poſſeſſion by force.

Feoffement of lands for maintenance.

An Aſſiſe or action of Treſpas againſt a diſſeiſor by force.

The authority of officers in Cities and Townes enfranchiſed touching force.

4 A ſpeciall Aſſiſe againſt a diſſeiſor with force.

5 Seuerall remedies for ſeuerall offences by force.

6 A Precept to the Sherife to impanell a Iury.

The Sherifes forfeiture for not due execution of a Precept.

The proces againſt offendors in force.

7 The forme of a Precept to the shirife, to impannell a Iurie.

8 The forme of an inquisition of forcible entrie.

9 A warrant to the shirife to make restitution.

10 Restitution awarded out of the Kings Bench.

11 No restitution, but where force is found by inquisition.

12 Where no restitution against three yeares possession.

Where restitution notwithstāding three yeares possession.

13 A *Supersedeas* to stay restitutiō.

14 Where force found, and yet no restitution.

15 A *Mittimus* to send to the gaole such as doe hold land by force.

16 A Iustice may enquire of Forcible Entries, without complaint.

17 In an action of Forcible Entrie the writ must be *Vi & armis*.

18 Who may bring an Action of forcible entrie.

19 Hee that hath title, entreth by force.

20 He that hath possession, sueth a Writ of Forcible entrie.

21 Forcible Entrie of a Rent or Common.

22 Forcible entry to the vse of another.

Forgerie.

1 Forgerie, Periurie, and Maintenance doe tend to the breach of the Peace.

2 The enormitie of Forgerie.

A repeale of former statutes of Forgerie.

3 Forging of deedes, whereby anothers lands shall be troubled.

4 Forging a deed, whereby a lease or annuity may be claimed.

5 Seuerall remedies against a Forger.

Forcible detaining by words only.

23 Iointenants or Tenants in common expelling each other by force.

24 Who may bring a Writ of Entrie vpon the Statute of 5. *Rich.* 2.

25 Turning a water-course by force.

26 The plea of not guiltie in Forcible entrie.

The finding of the speciall matter doth charge or discharge the defendant of force.

Presentment of Forcible Entrie.

27 One Action for entring and detaining with force.

28 A Writ vpon the Statute of North-hampton.

29 What shall be said to be force.

Force by number of seruants.

Force by number of weapons.

30 Who may make a forcible entrie.

31 What force is lawful to the persons of men.

32 Where the house of a man may be broken by force, and where not.

33 A particular person may defend himselfe and his by force.

34 The Writ of *Vi laica removenda*.

35 Where force shall be removed for the kings Incumbent, and where not.

Fol. 42.

6 A forger not twice punished for one offence.

7 The plaintifes release of forgery shall onely discharge his owne remedie.

8 The punishment for the second offence of forgerie.

9 The Iustices of Assise shal heare and determine forgerie.

10 Forging of deedes before the statute of 5. *Eliz.*

Pleading of a forged deede made

before the ſaid ſtatute.

11 Perſons not chargeable of Forgerie by the ſaid ſtatute of 5. *El.*

12 Forging of a cuſtomary booke.

13 The proces to leuie coſtes and damages of a forger.

14 The Kings pardon of forgerie.

15 Forging of a Teſtament.

16 Inſerting more in a will than is directed.

17 Pleas in barre of forgerie.

18 Where one ſhall haue an action of Forgerie, though hee hath but a right to the land.

19 Where no title to land, leaſe, &c. no action of Forgerie.

20 Forging of a deede touching ioynteuants lands.

21 One ſealeth a Deede by an others commaundement.

22 One forgeth a Deed, and another doth publiſh it.

23 Forgerie by antedating of a Deed.

24 Getting of other mens goods by forged letters or tokens.

25 Suſpected perſons of that kind of Forgerie called before the Iuſtices.

26 Forging of a Teſtimoniall.

Periurie, Subornation. *Fol.* 47.

1 Truth is to be tried by the othes of men.

The credit of an oath.

2 What ſorts of perſons are to be depoſed, and what not.

3 All the parties to the execution of iuſtice ſworne.

Cauſes of ſuſpition in Sherifes in impannelling of Iurors.

4 Euerie Iuror ought to be an honeſt and lawfull man.

Challenges of Iurors ſuſpected.

5 A witneſſe cannot be a Iuror.

6 Periurie ſuſpected by deliuerie of his verdict before hand.

7 Periurie ſuſpected by lying at the charge of one of the parties.

8 Periurie ſuſpected by being an arbitrator in the cauſe in queſtion.

9 Periurie ſuſpected by combination.

10 Periurie ſuſpected if one of the parties and a Iuror be in ſuit of law.

11 Periurie ſuſpected, for that the Iuror paſſed againſt him before.

12 Periurie ſuſpected in reſpect of ſubiection or gouernment.

13 Periurie ſuſpected in reſpect of aliance, kinred, or profit.

One godfather to the others childe.

14 Periurie ſuſpected in reſpect of ignorance of the cauſe.

Want of Hundredors.

Want of the View.

15 Periurie ſuſpected in reſpect of the pouertie of the Iurors.

16 The iudgement in an Attaint at the Common Lawe, againſt a Iurie proued periured.

17 The iudgement in an Attaint in London.

An Attaint where the thing in queſtion amounteth to fortie pounds, and where not.

18 The meaning to commit Periurie puniſhed.

Decies tantum.

Embraceors.

19 The puniſhment of Periurie committed by an Enqueſt in Wales.

20 Periurie committed by witneſſes.

A witneſſe vpon proces ſerued ſhal appeare.

21 The penaltie for procuring of vnlawfull Periurie.

22 The penaltie for committing of wilfull Periurie.

23 In what Courts Periurie ſhall be puniſhed.

24 Pro-

24 Proclamation of the Statute of Periurie.

25 Periurie puniſhed in the ſpirituall Court.

26 Periury puniſhed in the Starre-chamber.

27 Periury puniſhed in Bankrupts.

Periury committed by witneſſes for Bankrupts.

28 Periurie committed vpon an indictment of Riot.

Periurie vpon an indictment of Felonie.

29 Periurie in prooving a Suggeſtion for a prohibition.

30 A ſuite vpon Periurie in the Chauncerie.

31 Where Periurie ſhall be puniſhed in the temporall Court, & where in the ſpirituall.

Maintenance, Champertie, Embracerie, and buying of Titles. Fol. 55.

1 What Maintenance is, and the enormitie thereof.

2 Maintenance by men of authoritie.

3 Maintenance by combination.

Maintenance by Noblemens Officers.

4 Maintenance by Champertie.

Who be champertors.

Pleaders may giue counſel for their fees.

The puniſhment of champertors.

5 What is Champertie, and what not.

6 Maintenance by Embracerie.

Maintenance by Iurors.

The penalty of Maintenance in Iurors and Embraceors.

7 Maintenance puniſhed by the writ of *Decies tantum*.

8 Maintenance by *Ambidexter*.

9 Maintenance of ſuits in law, and the penalties thereof.

10 Maintenace by buying of pretenced Titles.

11 What is ſelling of a pretenced Title.

What is a pretenced Title.

12 Maintenance by giuing of liueries, and retaining of ſeruants or officers.

13 The publiſhing, inquiring of, and puniſhment of Maintenance.

14 Why the purſuing of Maintenance is left out of the ſtatute of 18. *Elizab.*

15 Aſſurances to haue Maintenance, void.

Lands gotten by force aſſured to haue maintenance.

16 What maintenante is puniſhable, and what iuſtifiable.

17 It is *no* maintenance in a Iuror for giuing of his verdict.

Maintenance in a Iurour, by ſuing for iudgement.

18 What is Maintenance in a Iuror, and what not.

19 Maintenance by ſpeaking of words.

Maintenance by comming to the barre with one of the parties.

20 Maintenance by giuing of money to labour a Iurie.

21 What is Maintenance in witneſſes, and what not.

22 Maintenance by procuring of an Indictment.

23 What is Maintenance in a Maimpernor.

24 Maintenance in reſpect of his intereſt in the land.

Maintenance in reſpect of his poſſibilitie to haue the land.

Maintenance in respect of his warranty.

25 Maintenance in respect of his rent.

A Lord may maintaine his Tenant.

26 Maintenance in respect of his debt.

27 Maintenance in respect of his title to goods.

Maintenance by detaining of a writing deliuered in trust.

28 Maintenance in respect of his ioint estate with others.

Maintenance by all the inhabitants of a parish.

29 Maintenaunce of the poore in their suits.

Clerkes, Counsellours, and Attorneis assigned to aide the poore.

30 Maintenance in respect of kinred or alliance.

Vnlawfull maintenance is continuall during that suit.

Maintenance in respect of Gossiprie.

31 Maintenance in respect the party could not speake English.

32 Maintenance in a professor of the Law.

33 Maintenaunce by an Attourney.

34 Maintenaunce in respect of neighborhood.

35 In what cases the maister may maintaine his seruant.

In what cases the seruant may maintaine his maister.

Deceit, Couin, Collusion, Fraud. *Fol. 65.*

1 The multitude and enormities of deceits and frauds.

2 The reward for paines, and punishmēt for deceits of officers towards the Law.

A Iudge.

A Clerke.

A Serieant.

A Pleader.

A Philozer.

An Exigenter.

No office of Iustice shall be sold or bought.

No man shall be Iustice of Assise in his owne Countie.

3 Who shall be Attourneys.

Sollicitors.

The penalty for following a suit in anothers name.

What acts done by Attourneys in seuerall cases shall be adiudged deceit.

4 The Lawe reiecteth deceitfull and fraudulent acts.

A fine leuied of land to defraud the right owner thereof, shall be void.

5 A fine leuied of ancient demesne land, to defraud the Lord of his Seigniorie, is voidable.

6 How a recouerie of land by deceit shalbe auoided.

7 A *Scire facias* vpon a recouerie by deceit auoided.

A recouery of debt by deceit auoided.

A iudgement to auoid the meaning of a Statute.

The executors shall haue remedie for a deceitfull recouerie against the Testator.

8 Deceit vpon a recouerie in a *Quare impedit*.

Deceit vpon a recouerie in wast.

9 Deceit vpon a recouery in a *Precipe* in *capite*.

10 Where a good Title shall be impaired by a couenous recouerie thereof.

11 A Warrantie deuised by deceit.

12 Deceit by getting of a Protectiō.

13 De-

13 Deceit by purchaſing of a writ to charge another.

14 Deceit by purchaſing of a writ in anothers name.

Deceit for procuring one to ſue another.

15 Deceit by acknowledging of a ſtatute in anothers name.

Deceit by doing of a iudiciall act in anothers name.

16 Deceit by forging of a reſignation of a Benefice.

17 Deceit by conueying of land to one man, which before was bargained to another.

18 Deceit by not perfourming of his Warranty.

19 Deceit by confeſſion of an action, wherein he hath no intereſt.

20 Deceit by the aliening of the goods of his wife, from whom he meaneth to be diuorced.

21 Sale of goods in open market by deceit and couin.

22 A fraudulent aſſuraunce to defeate the diſcontinuee in taile of his plea of Aſſets per Diſcent.

23 Fraudulent aſſurance to defeat a Lord of his Warde, Marriage, &c.

24 He that is not partie to a fraud ſhall ſuſtaine no loſſe by it.

25 Deceit and colluſion to bring land into mortmaine.

Lands aſſured in mortmaine to Churches, Chappels, &c.

Collaterall aſſuraunces to defraud &c.

Which be charitable and lawfull vſes.

26 Couin by a particular Tenant, to deceiue him in the reuerſion.

27 Couin by him in the reuerſion, to deceiue the leſſee for yeares.

Couin to auoide a Statute or Recognizance.

28 Fraudulent deedes to auoide other mens duties, &c.

The forfeiture of parties to fraudulent deedes, who doe iuſtifie the ſame.

Common recoueries.

Voucher in *Formedon.*

Eſtates made vpon good conſideration and *bona fide.*

29 Fraudulent Deedes to auoide forfeitures ſhall be void.

30 A Deed without fraud muſt be made vpon good conſideration and *bona fide.*

Infallible markes of a fraudulent deed of gift.

How a deed of gift may be made without fraud.

31 Fraudulent aſſuraunces to deceiue purchaſors.

The forfeiture of parties to fraudulent conueiances, which do iuſtifie the ſame.

Conueiances made vpon good cõſiderations, and *bona fide.*

Conueiances with condition of reuocation or alteration.

Morgages.

32 A purchaſor doth know before of a fraudulent deed.

33 The father maketh a fraudulent leaſe, and the ſonne ſelleth the land.

34 A womans ioynture made by fraud.

35 Fraudulent deedes to auoide ſucceſſors of dilapidations.

36 An action popular ſued by colluſion and fraud.

37 Fraudulent poſſeſſing of Bankrupts Lands, Goods, or Debts.

38 Fraudulent adminiſtration of inteſtate goods.

39 Fraudulent conueiances of Abbey lands.

40 Seuerall deceits and frauds in Marchandizes and men of trade.

41 Deceit by ſelling of vnwholeſome victuall.

A briefe effect of euery Braunch

Extortion, Exaction. *Fol.* 80.

1 What is Extortion.
What is Exaction.

2 Exaction by taking of reward for a report.

3 Extortion in the Sherife, Coroner, or other officers.

4 Extortion in a Serieant, Crier, or Marſhall of a Iudge.

5 Extortion in a Coroner.

6 Extortion in a Shirife, vnderſhirife, or Bailife, for making of arreſts, &c.

7 Extortion in a Sherife, for ſparing to returne a Iuror.

8 Extortion in a Sherife, for the ſeruing of an Execution.

9 Extortion in the Chirographer of the common place.

10 Extortion in the Kings Auditors, or their Clerkes.

11 Extortion in the Kings Receiuers.
Extortion in them who do pay fees or penſions.

12 Extortion in officers of the Exchequer.

13 Extortion in a Clerke of the Signet or priuy Seale.

14 Extortion by Officers of the Faculties.

15 Extortion by Gouernors vpō ſuch as be made prentices or freemen.

16 Extortion by the Officers of the Court of Wards.

17 Extortion in taking of Obligations for the payment of firſt fruits.

18 Extortion by Eſcheators.

19 Exaction by the Admirall &c. vpon them who trauaile for Fiſh.

20 Extortion by the Marſhall of the kings houſe.
Extortion by a ſeruitor of billes in the Marſhalls Court.

21 Exaction by Muſter-maiſters to ſpare the taking of ſouldiers.
Exaction by captains of their ſouldiers.

22 Extortiō by taking of Scauage of Marchants.

23 Extortion by the Clerke of the Statutes or &c.

24 A preuention of extortion by Atturnies, in taking of exceſſiue fees.
An Atturney delaying of a ſuit, or demaunding more than is due.

25 A preuention of Extortion in ſtewards of Courts.

26 Extortion in gaugers, ſearchers, and packers of fiſh.

27 Extortion in Ordinaries and their Officers for probate of Teſtaments, Adminiſtrations, &c.

28 Extortion in an Ordinarie for the Seale of a Citation.

29 Extortion in Parſons, Vicars, &c. for Mortuaries.

30 Exaction for preſenting or collating to a Benfice.

31 Exaction for admitting to a Benefice.

32 Exaction for reſigning, or exchanging of a Benefice.

33 Exaction for making of Miniſters, or giuing licence to preach.

34 Exaction for a voice in electing of a Fellow or Scholler into a Colledge, or &c.

35 Exaction by taking money to reſigne a place in a Colledge, &c.

36 Exaction by gathering mony, which ſhould diſcharge the fifteene of a towne.

37 Extortion by taking of an amerciament in a Court Baron.

38 It is no Extortion to take lawfull fees.
Taking of barre fees of a priſoner diſcharged.
Taking of gloues of an offendor pardoned.

39 Extortion by taking of fees of him who doth appeare gratis.

Oppreſſion

or Chapter in this Treatiſe.

Oppreßion. *Fol.* 89.

1 What Oppreſſion is.
Oppreſſion by diſſeiſins.
Of what things one may be diſſeiſed.
2 Oppreſſion by approuement of common.
Oppreſſion by ſurcharge of cõmon.
3 Oppreſſion by diſtreſſes.
Poundage money.
Diſtraining out of his fee.
Exceſſiue diſtreſſe.
Seuerall diſtreſſes for one thing.
Diſtreſſe for damage feſant.
4 Oppreſſion by treſpaſſes.
5 Oppreſſion by Nuſances.
6 Oppreſſion by Reſcous.
7 Oppreſſion by encroachments.
8 Oppreſſion by exceſſiue amerciaments.
9 Oppreſſion by cõmitting of waſt.
Waſt in land.
Waſt in houſes.
Waſt in gardens.
Waſt in men.
10 Oppreſſions redreſſed by an *Audita querela.*
11 Oppreſſion by Foreſtallers, Ingroſſers, and Regrators.
Who is a Foreſtaller.
Who is an Ingroſſer.
Who is a Regrator.
The puniſhment of Foreſtallers, &c.
In what caſes ingroſſing and regrating be tollerable.
Changing of ſeed.
Buying and ſelling of Cattell aliue.
The authoritie of Iuſt. of Peace in theſe caſes.
Tranſporting allowed by Iuſtices.
When Corne may be tranſported.
Buying & ſelling of fiſh neer the Sea.
Drouers licenced to buy & ſell cattel.
12 Oppreſſion by Badgers, Laders, &c.
Obſeruations neceſſary in all licẽces.
13 Oppreſſion of Printers and Stationers.
Oppreſſion by Printers and Stationers.
14 Oppreſſion by tranſporting of Gold and Siluer.
15 Oppreſſion by tranſporting of Copper, &c.
16 Oppreſſion by Pewterers.
17 Oppreſſion of inhabitants of Market Townes.
18 Oppreſſion by taking of ſeuerall farmes.
Taking of Farmes in the Iſle of Wight.
19 Oppreſſion by keeping of many Sheepe.
20 Oppreſſion by Spirituall perſons in taking of Farmes.
Oppreſſion by them in buying and ſelling.
Oppreſſion by them in farming of Parſonages.
Oppreſſion by them in keeping of Tan-houſes, or Brew-houſes.
21 Oppreſſion by taking of exceſſiue Toll.
22 Oppreſſion ought not to be done to Aliens and Strangers.
23 Oppreſſion by making of Iron workes.
24 Oppreſſion by Brewers.
25 Oppreſſion by bringing into the Realme wollen Cardes.
26 Oppreſſion by erecting of Weares.
Oppreſſion by deſtroying of ſpawne or fry of Fiſh.
Oppreſſion by fiſhing with vnlawfull nets.
27 Oppreſſion by buying and ſelling of Fuell.
28 Oppreſſion by tranſporting of victuall.
29 Oppreſſion by Vſurie.
30 Oppreſſion by cutting out the head of any Conduit.
Oppreſſion by burning of a cart laden.

Oppreſſion

Oppreſſion by cutting out of the tongue of a beaſt.

Oppreſſion by cutting off the eares of a man.

Oppreſſion by barking of trees.

31 Oppreſſion by hawking or hunting in corne growing.

32 Oppreſſion by taking of other mens fiſh.

33 Oppreſſion by decaying of townes and houſes of husbandry.

34 Oppreſſion by decaying of tillage.

35 Oppreſſions, and al the former offences, puniſhable in the Starre-chamber.

Treaſons. *Fol.* 106.

1 What is Treaſon.

2 A repeale of former Treaſons.

Offences made Treaſon by Statute.

3 Compaſſing or imagining the death of the King, &c.

A conſpiracy by diuers, executed by ſome of them.

4 Leuying of warre, or adhering to the Kings enemies.

5 Counterfeiting the Kings Seale.

Conſpirators & ayders in Treaſon.

6 Counterfeiting the Kings money.

Coyners of money by warrant, doe abuſe it.

7 Petit Treaſon.

A ſeruant killeth his maſter or miſtreſſe.

The wife conſpireth to kill her huſband.

8 The ſonne killeth father or mother.

9 Treaſon in breaking of priſon.

An Indictor diſcouereth counſell.

10 Treaſon by ſtatute.

Treaſon by forging the coine of other realmes.

Treaſon by forging the Kings ſigne manuell.

11 Bringing into the realm money counterfeit.

12 Treaſon by clipping, waſhing, or filing of money.

13 Treaſon by diminiſhing, ſcaling, or lightning of money.

14 Treaſon by the maintayning the authoritie of the Biſhop of Rome.

15 The oath touching the Queenes ſupreame gouernment.

Premunire for the firſt refuſal of the oath.

Treaſon for the ſecond refuſall of the oath.

16 Treaſon for giuing or taking abſolution from Rome.

Treaſon to obtain Buls from Rome.

17 Treaſon to perſuade to the Romiſh religion.

Treaſon to be perſwaded to the Romiſh Religion.

Practiſing to abſolue, or reconcile.

18 Treaſon for Ieſuits or Prieſts to come into the Realme.

19 Treaſon in Seminary prieſts not returning.

20 What Miſpriſion of Treaſon is.

The forfeiture in Miſpriſion.

21 Miſpriſion to counterfeit money not currant.

22 Miſpriſion to aid perſuaders to the Romiſh religion.

23 Miſpriſion to conceale reconciliation offered.

24 Miſpriſion to inroll an indictment not found.

25 Miſpriſion in drawing of a ſword to ſtrike a Iudge ſitting in his place.

26 Miſpriſion in ſtriking of a Iuror in a Iudges preſence.

27 Miſpriſion by ſtriking a man in Weſtminſter Hall the Court ſitting.

28 Miſpriſion by reſcuing of a priſoner

priſoner arreſted by a Iudge.
29 Shedding of bloud within the Kings houſe.
30 Triall of Treaſons committed out of the Realme.
31 Outlawrie of offendors in Treaſon being out of the Realme.
32 Triall of Treaſons committed in Wales.
33 The force of Attainder of Treaſon by the common law.
34 No record of Attainder ſhall be reuerſed, where the offendor is executed.
35 Felonie made Treaſon by ſtatute.
36 An Engliſh traitor ſubiect to a forreine prince.
37 An Alien borne committeth Treaſon.
38 A ſubiect ioyneth the Kings Armes to his owne.

Homicide. *Fol.* 117.

1 Homicide by Iuſtice.
By neceſſitie.
By chaunce or misfortune.
By will.
2 Homicide by Iuſtice.
The order of law not obſerued in the execution of juſtice.
3 None may kill a man that is outlawed, or attainted in *Premunire*.
4 Killing of a felon that wil not be arreſted.
Euery perſon may arreſt a felon.
Killing of ſuch as be vnlawfully aſſembled.
5 Killing of him that is in carrying to the Gaole.
6 Killing of a priſoner attempting to eſcape.
7 Killing him that attempteth robberie or burglarie.
8 Killing of an offendor in a Park &c.
9 Vnitie of poſſeſſion in a chaſe or mannor.
10 One killing of another in combat.
11 Homicide vpon neceſſitie in defence of his houſe from burning.
Homicide in defending himſelfe from robberie.
12 No forfeiture for Homicide vpon neceſſitie.
13 Killing of an other in his owne defence, in his owne houſe.
14 Neceſſitie ineuitable requiſit in Homicide in his owne defence.
The definition of Homicide in his owne defence.
15 Where in Homicide in his own defence his goods ſhall be forfeited, and where not.
16 Killing a man in his owne defence, found by verdict.
17 The priſoner indicted for killing in his owne defence, muſt plead, Not guiltie.
18 How he ſhalbe diſcharged that killeth a man in his owne defence.
19 What is Homicide by miſaduenture.
20 The like order in miſaduenture, as in his owne defence.
21 What is Homicide by murder.
What is Homicide by manſlaughter.
22 The name of murder.
Murder more grieuous than felonie.
23 Wilfull poyſoning is murder.
24 Stabbing to death is murder.
25 Murder by killing of a Conſtable comming to part a fray.
Murder by killing of a Sheriſe or his Officers in ſeruing of Proces.
Murder by killing of a watchman.
26 Murder and Manſlaughter committed in the death of one man.
27 A man bearing malice to one, killeth another.

28 A man giueth poyſon to one, an other taketh it, and dyeth.

29 Two agreeing to commit a Murder, one of them doth it.

30 Meaning to kill, without the act, is not Homicide.

Act in killing without meaning, is Homicide.

31 Homicide by giuing poiſoned drinke to an other.

32 Many do attempt to doe an vnlawfull act, and one of them doth kill a man.

33 Homicide by carrying a ſicke man into the ayre or cold.

34 A man dyeth vnder the Phyſitians or Chirurgians care.

35 Homicide vpon the euil words of an other.

36 Homicide by a Franticke man.

Homicide by a man that is deaf and dumbe.

Homicide by a drunkard.

37 Homicide by an infant.

38 Homicide by a beaſt.

39 In homicide the party killed muſt be in *Eſſe*.

40 In Homicide the partie hurt muſt dye within the yeare.

41 Homicide by *felo de ſe*.

The cauſe of the forfeiture of *felo de ſe*.

42 An infant or lunaticke cannot be *felo de ſe*.

43 Killing of himſelfe in ſtead of another.

44 Forfeiture of a leaſe made to *felo de ſe* and his wife.

45 No forfeiture of a debt vpon contract made by *felo de ſe*.

46 A villaine is *felo de ſe*, and his Lord ſeiſeth his goods.

47 One mortgageth his goods and becommeth *felo de ſe*.

48 Homicide by caſualtie.

49 A *Deodand*, and what it is.

50 A tree, and the bough of an other tree doth kill a man.

51 Falling off a cart, or from a cart.

52 Falling from a cart laden.

Falling from a cart that is lading.

53 Falling from a horſe into the water.

A horſe or other beaſt killeth a man.

From what time a *Deodand*, ſhall haue relation.

54 A beame of a bell in a church killeth a man.

55 A wheele of a Mill killeth a man.

56 Falling from a horſe againſt a Trunke.

57 Falling from a houell or ricke.

58 Falling out of a ſhip that is ſailing.

59 No *Deodand* for him that is within fourteene yeares of age.

60 The Sherife ſhall be charged with a *Deodand*.

61 A man vnknowne found dead in the field.

Felonie by the Common Law. *Fol.* 125.

1 What is Larceny.

Petit Larcenie.

The intent of ſtealing muſt bee at the time of the receit of the goods.

2 Stealing goods at ſeuerall times of the value of xij.d'.

Felony in ſeuerall perſons.

3 The Iurie may find an vnder value of the goods ſtolne.

4 Felonie where the goods be in the owners poſſeſſion.

5 A ſeruant hauing vſe of his Maſters goods, doth ſteale them.

6 One hauing the key, doth ſteale the goods in the houſe, or cheſt.

7 A bargaine with a Carryer, but not a deliuerie of the goods.

8 A Carrier ſtealeth the goods committed vnto him.

9 A Carrier ſtealeth part of his charge.
10 Felony in a man for taking of his owne goods.
11 Stealing of the goods of a Church, or Corporation.
12 In what caſe a married wife may commit felony, in what not.
A woman taking her husbands goods.
13 In what caſe an infant may commit felonie.
An ideot or lunaticke cannot commit felonie.
14 Burning of a houſe or barne, felonie.
15 Felonie in indictors to diſcouer their counſell.
16 Reſcuing of a priſoner felony.
17 Wilfull eſcape is felonie.
18 Goods ſtolne from him that hath the cuſtodie of them.
19 Goods ſtolne from him that did ſteale them.
20 Of what things Larcenie may be committed, of what not.
21 Felonie muſt be of perſonall goods, and not of things reall.
22 A thing made felonie by Statute, which is after repealed.
23 What Theefeboot is.
24 Felonie committed in one K. raigne, puniſhed in an other.
25 Stolne goods carried into ſeuerall counties.
In what gaole a felon ſhall be impriſoned.
26 Breaking a houſe to take a felon.
27 What is robberie.
Robberie by threatning.
Taking a mans money, but not putting him in feare.
28 Robbery by taking an oath to bring money.
Robberie by taking of money giuen.
29 Robberie in will but not in deed.
30 What is Burglarie.
31 Breaking of a houſe, but not entring.
32 No Burglarie may be committed in the day time.
33 Breaking of a dwelling houſe wherein no perſon is.

Felonie by Statute. *Fol.* 129.

1 Felonie in conſpiring to deſtroy the King, or any Lord, or Counſellor.
2 Felonie to rauiſh a woman.
3 Felonie to abuſe a woman child vnder the age of tenne yeares.
4 Felony in the rauiſher where the woman rauiſhed doth conſent.
A woman rauiſhed conceiued with child.
The woman rauiſhed, a concubine.
The woman not carnally knowne.
Rapuit neceſſarie in an Indictment of Rape.
5 Felonie by taking a woman againſt her will.
6 Felonie for tranſporting of ſheepe.
7 Felonie in marrying againe, vntill the former husband or wife be dead.
8 Felonie in ſome ſuch as be infected with the plague, for their abuſes.
9 In what caſe a phantaſticall Recuſant muſt abiure, vpon paine of felonie.
10 In what caſes a Popiſh Recuſant muſt abiure, vpon paine of felonie.
11 The vice of buggerie is felonie.
12 Felonie in ſeruants that imbecile their maſter goods.
Receiuing money for wares.
Receiuing money vpon an obligation.

13 Felonie in ſeruants imbeciling their maſters goods after their deaths.
14 Felony by enforcing a priſoner to become an approuer.
15 Felonie in thoſe that counterfeit to be Ægyptians.
16 Felonie by imbeziling of records.
The penaltie of Iudges or Officers abuſing records.
17 Felonie in cutting out of tongues, or putting out of eyes.
18 Felony in practiſing of multiplication of gold or ſiluer.
19 Felony in withholding of a hawke.
20 Felonie in making of congregations of Maſons.
21 Felony for a ſouldier, mariner, or gunner to depart from his captain.
22 Felonie by receiuing or releeuing of Ieſuites or Prieſts.
23 Felony for making of purueiance without warrant.
24 Felony by vnlawfull purueyance of ſheepe.
25 Felony by making purueiance without appraiſement.
26 Felony by taking carriage contrarie to his commiſſion.
27 In what caſe forging of euidence is felonie.
28 In what caſe a baniſhed rogue ſhall tie a felon.
29 Felony by practiſing of coniuration, witchcraft, inuocation &c.
30 Felonie in hunting in the night, or with viſors, and denying of it.
31 Felony by vnlawful aſſemblies about twelue perſons, &c.
32 Felonie in wandring ſouldiers or mariners, that will not ſettle to worke.
33 Felonie in imbeciling of the Kings Armour, Ordnance, Shot, &c.
34 Felony in cutting downe Powdike.
35 Felonie in not taking the oath for the King, or not entring into bond.
36 Felonie in forcible carying any perſon out of Cumberland, &c.
37 Felonie in breaking of priſon.

Principall and Acceſſorie. *Fol.* 137.

1 There is no Acceſſorie in high Treaſon.
2 Acceſſorie before the offence committed.
3 Procurement of felony.
4 Comming purpoſely to doe Manſlaughter.
5 A will to aſſiſt a felon.
6 In company, but not aſſenting to a felonie.
7 Holding a man vntill hee bee ſlaine.
8 One thing commanded, and an other effected.
9 Counſelling to rob one, and an other is robbed.
Commaunding to beat one and another is killed.
Commaunding to burne one houſe, and an other is burned.
Counſell to do one act, and an other is done.
The felony commanded, committed in an other manner.
10 The felonie commaunded, counter-maunded.
11 Counſelling to poiſon one, and an other is poiſoned.
12 A commaunding or ayding to rape or robberie.
13 Acceſſories after the offence.
What act of the Acceſſorie maketh him a felon.
14 Receit of a felon attainted in the ſame county.
15 Receit of a felon attainted in an other countie.
16 Indictment and triall of an Acceſſorie

ceſſorie in one Countie, to an offence done in an other.

17 Receiuing of ſtolne goods.

18 Receiuing of a Felon.

19 Acceſſorie to an Acceſſorie.

20 Reſcue of a Felon.

21 A wife not acceſſorie to her huſband.

22 A wife may be a principall felon.

Acceſſaries to offences made Felony by Statute.

23 In Rape the aſſiſtant principall.

24 Procurors and abettors in imbeſiling of Records.

25 Acceſſaries to offendors in rebellious aſſemblies.

26 Aidors and abettors in coniuration.

27 Procurers to take a woman againſt her will.

28 In what caſes aiders be principals.

29 Acquitall of the principal: acquitall of the acceſſarie.

30 Principall & Acceſſarie in Manſlaughter.

31 Two ſorts of Attainders, and which they be.

The principall ſhall be attainted before the acceſſary.

32 Acceſſarie in an Appeall commenced by bill or writ.

33 The principall ſhall be attainted before the Exigent ſhall be awarded againſt the acceſſarie.

34 The principall maketh default, and the Acceſſarie appeareth.

35 The Acceſſarie wageth battell.

36 The acceſſarie pleadeth in abatement of the writ.

37 Both the principall and acceſſary doe appeare.

Where the principals plea ſhall be tried before the Acceſſaries anſwere.

38 The principall pleadeth in abatement of the writ.

39 The principal pleadeth not guilty.

40 Seuerall principals and one acceſſarie.

41 The attainder of the principall muſt be in the ſame ſute.

42 The principal attainted, and dieth.

43 The principall doth ſtand mute.

44 Errour in the attainder of the principall.

45 An abiured acceſſarie returneth.

46 The acceſſarie tryed vpon his owne requeſt.

47 The principall found not guiltie.

48 The principal dieth in priſon before attainder.

49 The principall attainted of an other felony.

50 The principall ſlew the dead man in his owne defence.

51 The principall hath his Clergie or pardon.

52 In an Appeal the acquitall of the principal, is no acquital of the acceſſary.

Breaking of Priſon, and Reſcous. *Fol.* 144.

1 Who is a Priſoner.

2 A Stranger breaketh priſon.

3 Letting a priſoner eſcape.

4 Negligent eſcape.

5 Reſcuing of a priſoner.

6 Diſturbing of an arreſt.

7 The Shiriſe retourneth a Reſcous.

8 Whoſe the priſon broken muſt be.

9 Eſcaping or reſcuing of one attached of Treſpas.

10 Reſcuing of an offendour after iudgement.

11 The impriſonment, and not the attainder reſpected in eſcape.

12 Letting eſcape one impriſoned for Treaſon.

13 Diſobeying of a warrant to arreſt Hunters.

14 Confeſſion before a Coroner of breaking of priſon.

15 Opening the priſon, but not eſcaping.

Eſcape. *Fol.* 144.

1 Voluntarie Eſcape, and what it is.
2 Eſcape of an offendour not arreſted.
3 It muſt be Felonie at the time of the eſcape.
4 Negligent eſcape, and what it is.
5 Killing of him that eſcapeth.
6 Taking againe the partie eſcaping.
7 Licencing the priſoner to go to an other Towne.
8 Licencing the priſoner to go into the ſame Towne.
9 Eſcape by bayling one not mainpernable.
10 Eſcape of one arreſted of petite Larcenie.
11 Eſcape by the retourne of *Cepi corpus*.
12 What is a double Eſcape.
13 Where an eſcape may be without an arreſt.
14 Who ſhall be charged with an eſcape.
15 Eſcape in a Towne walled.
16 Flying to a Church, and eſcaping.
17 Eſcaping by making of Abiuration.
18 Eſcaping before or after arreſt.
19 Where the Shirife, and where the Towne, ſhall be charged with an eſcape.
20 Where the Hundred ſhall be charged with an eſcape.
21 Eſcape of one impriſoned for a time.
22 Where the Towne, Hundred, or Countie ſhall be charged with an eſcape.
23 Who ſhall be charged with a priſoner, if the Gaoler will not receiue him.
24 Who is priſoner by matter of Record.
25 Where a Towne ſhall be charged with an eſcape.
26 Where a Shirife ſhall be charged with an eſcape.
27 A Coroner ſent to the Marſhalſey, to inquire of Eſcapes.
28 Confeſſing and auoyding of an eſcape.
29 Who is a priſoner by matter in fait.

Before whom an eſcape ſhall be preſented.

30 Iuſtices of Peace and the Coroner ſhall inquire of Eſcapes.
31 Trauerſe to a preſentment of an eſcape.
32 Eſcapes inquirable in Leetes and Turnes.
33 The penalties of Eſcapes.
34 Where a man arreſted may be ſet at libertie, without further triall, and where not.

Purſute by Huy and Cry. *Fol.* 147.

1 All men ſhall purſue the Huy and crie.

The puniſhment of concealment, and not attaching of Felons.

2 Freſh ſute and inquirie ſhal be made after Felons.

The penaltie if a Felon be not taken.

3 Warding of Townes that be walled.

4 When the night watch ſhall begin and end.

The penaltie of reſiſting of arreſt.

5 How Highwayes ſhall be enlarged.

6 The Hundred charged where Freſh ſute vpon Huy and crie ſhall ceaſe.

The Clerke of the Peace ſhall proſecute the ſuit.

7 Who

7 Who ſhall proſecute the ſute if the Clerke of the Peace do die, or be remoued.
8 A remedie for equall contribution.
9 Deliuering of the contribute money.
10 Leuying of contribution.
11 No penaltie where any of the offendors be taken.
12 Within what time the ſute ſhall be commenced.
13 In what manner Huy and crie ſhal be made.
14 Notice muſt be giuen of the robberie.
The partie robbed examined and bound to proſecute the offendors.
15 A remedie for the Inhabitants of Benherſt in Barkeſhire.
In what caſes onely their recouerie ſhall be had.
16 Purſute will not ſerue without apprehenſion, or deſcrying the Felons.
17 Arreſting of him that is purſued by Huy and crie.

Appeales of Felonie. *Fol.* 151.

1 What an Appeal is.
Appeal by a woman of the death of her husband.
2 An Appellant conueyeth his title by a woman.
3 The declaration in an Appeal of Murther.
4 The woman appellant muſt be the dead mans lawfull wife.
5 The woman muſt liue vnmarried.
6 The woman married betweene iudgement and execution.
7 Where an Appeal for a woman, but no Dower.
8 Where the wife may haue an appeal, none other ſhall.
9 Who ſhall haue the Appeal, if the man ſlaine haue no wife.
A Baſtard.
Heire in borough Engliſh.
10 An appeal dyeth with the Appellant, or by his nonſute.
11 The heire doth releaſe the appeal, and die.
12 The heire doth recouer and die before the Appellees execution.
13 The eldeſt ſonne diſableth himſelfe to bring an appeal.
14 Who ſhall haue the Appeal for killing of Father, Mother, brother, or wife.
15 A Lord killeth his villaine.
16 An Enfant may haue an Appeal.
17 A man of threeſcore and ten yeres of age may haue an Appeal.
18 Diſabilities to bring an appeal.
19 Diſabilities in the appellant.
20 Pleading that the appellant hath an elder brother.
21 Attourney for the appellant in appeal.
22 Who may purſue an appeal of Robberie.
Robbing of a Carrier.
23 The Appeal of a Woman, of an Enfant, of Executors.
24 A villaine ſhall not haue an appeal of Robberie againſt his Lord.
25 An Appeal, or an Indictment for the Kings goods.
26 An appeal of Robberie done to an other.
27 An appeal of Rape.
28 Who ſhall haue the appeal where a woman rauiſhed conſenteth.
29 A lawfull husband ſhall haue the appeal of Rape.
30 Where the father or kinſman ſhall haue an appeal of Rape.
31 An appeal where the Lord doth rauiſh his Nieſe.
32 Pledges in appeal of Rape.

33 Within what time an Appeal ſhal be commenced.

34 From what time the yeare ſhall haue relation.

35 The yeare ſhal haue relation from the offence done.

36 Within what time an appeal of Rape ſhall be commenced.

37 In what Countie Appeal ſhall be brought.

38 In what countie an appeal of Rape ſhall be brought.

39 In what countie an appeal of Robberie ſnall be brought.

40 Threatning in one Countie to bring money into an other.

41 Goods robbed carried into diuers Counties.

42 Before whom an Appeal ſhall be brought.

43 Remouing an Appeal out of the Countie.

44 An Appeal before the Iuſtices of Gaole deliuerie.

45 An appeal before the Iuſtices of the Kings Bench.

46 An Appeal againſt one bayled.

No appeal againſt him that is let by mainpriſe.

47 Appeal before Iuſtices of Peace.

48 Appeal before the Conſtable and Marſhall.

No appeal in Parliament.

49 Diuers appeales for one Felonie.

50 One onely appeal for one Felonie.

51 Where diuers Appeales for one Felonie.

52 Two appeals founded vpon one Felonie.

53 Robberie of ſeuerall parcels of goods.

54 Where one ſhall anſwere to diuers Appeals, or Indictments.

55 Anſwere to diuers Indictments aſwell as to appeales.

56 He that hath his Clergie ſhall anſwere to an appeal of former offences.

57 A Clerke ſhall anſwere to a former Appeal or Indictment of former offences.

58 Proces in appeal before the Coroner.

59 Proces vpon an appeal or Indictment.

60 Proces againſt Indictors in an other county.

61 Proces againſt appellees and Indictees in forraine Counties.

62 Proces vpon an appeal remoued into the Kings Bench.

63 The partie appealed muſt be ſuppoſed to be of a forraine Countie.

64 An appellee dwelling in no place certaine.

65 Proces into a Countie Palantine.

66 Proces againſt principall and acceſſarie.

67 The Statute of *Weſt.* 1. extendeth onely to Appeales commenced by bill.

68 In appeal one appeareth, and others make default.

69 Proces to remone an appeal.

70 A *Certiorari* into the Countie.

71 Proces againſt the plaintife after an appeal remoued.

72 Proces againſt the defendant after an appeal remoued.

73 Proces againſt one that by the Shirifes returne eſcaped.

74 Proces with a prouiſo for the appellee.

75 Proces to remoue priſoners or Records.

76 How the appellee ſhall be led to the barre.

77 Count in an Appeal.

An appeal of Murther.

The yeare, day, houre, time of the king, and the Towne materiall.

78 The place where the fact was done.

79 Count in an appeal of death againſt three as principals.

The fact muſt be declared.

80 Count in an appeal of Robberie.
81 Where in an appeal of Rape the Statute muſt be rehearſed in the Count, and where not.
82 Defence in an Appeal.
83 Pleas to the writ in Appeal.
84 The forme of the writ in an appeal of Rape.
This word *Rapuit* materiall.
85 Not two Appeales for one offence.
86 Pleading of one in an Appeal brought againſt two.
87 The plaintife in an Appeal miſnamed.
88 Two or three pleas to the writ.
89 Barres in Appeal.
Barre in appeal of death brought by the wife.
90 Barre in appeal of death brought by the Heire.
91 Barre in appeal of Rape, or Robberie.
92 Generall pleas in barre in Appeal.
93 Barre for that the plaintife brought an other Appeal.
94 Barre by the plaintifes releaſe.
95 Pleading not guiltie after others pleas.
96 Where the King may proſecute an Appeal begun.
97 No appeal of Treaſon.

Indictments. Fol. 162.

1 Commiſſions to Shirifes to take Indictments.
2 When the Shirife ſhall hold his Turne.
An Indictment found in an vnlawfull time.
3 Shirifes ſhall inquire by xij. men at the leaſt.
4 Indictments before the Shirife ſhal be by Roll indented.
5 Of what ſufficiencie Iurours retourned in the Shirifes Turne ſhall be.
6 Indictments taken in the Shirifes Turne ſhall be deliuered to the Iuſtices of Peace.
7 Iurours in Indictments ſhall be retourned without the denomination of any.
8 Pannels for Indictments may be reformed by the Iuſtices.
9 An Enqueſt to inquire of the concealment of other Enqueſts.
10 In what caſe Indictment and triall ſhall be where the King will.
11 Indictments and trials of Treaſon committed out of the Realme.
12 Indictment in the County of Lancaſter of a forrainer.
13 Indictment of a Lancaſhire man in a forraine Countie.
14 Indictment for the ſtriking, or poiſoning of a man in one Countie, who dieth in an other.
Indictment of an accceſſarie to an offence committed in an other Countie.
15 Indictments lacking theſe words: *Inſidiatores viarum, & depopulatores agrorum.*
16 Words not neceſſarie in Indictments.
17 No more ſhal be in an Indictment then is true.
Felonicè or *Piraticè* in an Indictment.
18 Where a verdict in an action of Treſpas ſhall be an Indictment of Felonie.
19 The Shirifes retorne is no Indictment.
20 The yeare, day, and place neceſſarie in an Indictment.
21 An Indictment muſt be certaine in the matter.
22 An Indictment muſt be certaine

in the persons receiued.

23 An Indictment vncertaine at what Court.

24 Indictment for making of Money.

25 Indictment of a common theefe.

Indictment of the Ordinarie.

26 The foresaid A. in an Indictment, where none is before named.

27 Indictment for the killing of a man vnknowne.

Indictment for the stealing of the goods of a man vnknowne.

28 Indictment for the stealing of the goodes of a Church, or Chappell.

29 An Indictment depending vpon an argument, or implication.

30 In an Indictment *furatus est* without *felonicè*, or in Rape *carnaliter cognouit*, without *rapuit*.

31 An Indictment before Iustices of Peace.

32 An Indictment before the Maior of London vpon sight of the bodie.

33 Indictment vpon the receit of a Felon as accessarie.

34 Indictment of the receit of the goods stolne, and of the Felon.

35 Indictments void for one purpose will serue for an other.

36 A prisoner discharged, and after retained in prison.

37 The difference between an Appeal and Indictment.

38 Pleading an other time acquit of the same Felony.

39 Indictment of the death of a man knowne by two surnames.

40 Indicted. of the same mans death.

41 Indicted in two counties of one offence.

42 Arraigned vpon an insufficient Indictment or Appeal.

43 Acquit vpon an erronius Appeal.

44 Acquit vpon an Appeale brought by one that hath no right.

45 Arraigned vpon an Indictment, before the parties Appeal be determined.

46 Acquit by battaile in an Appeal.

47 A Murtherer indicted and arraigned at the Kings sute.

An other time acquit no plea in an Appeal, but in an Indictment.

48 No Indictment of Robberie, vntill the Appeal be tried.

49 Pleading an other time conuict of the same Felony.

50 An other time attainted of the same Felony.

51 The Kings Pardon obiected against the plea of an other time attainted.

52 Who is said attainted, and who conuict of Felony.

Mainprise and Bayle. *Fol.* 173.

1 In what cases a prisoner is mainpernable, in what not.

2 The principall in Appeal of death not mainpernable.

3 Where the principall let to mainprise.

4 Pleading excommunication in the plaintife.

5 Who are mainpernable, who not.

Bailement by the Shirife.

With-holding of prisoners mainpernable.

6 In what cases no mainprise by the common Law.

The King or Iustices commaundement.

7 The Marshall shall baile no prisoner.

The Iustices ordinarie, or absolute com-

commaundement.
8 Mainprise for offendors in Vert or Venison.
9 In what case he that is outlawed may be bailed.
10 Mainprise during an Approuers life.
11 Mainprise vpon good name.
The principall in Burglary and Robbery mainpernable.
12 No bailement for a prisoner attainted.
13 Bailement of offendors by Iustices of Peace.
14 Bailement of offendors by the Shirife.
15 Bailement by Shirifes and others.
16 Imprisonment at the Kings pleasure.
17 The difference betweene bailement in Felonie, and in a personall action.
8 Mainprise is matter of record.

Confession of the offence. *Fol.* 177.

1 An offendour in felony pleadeth one of three pleas.
2 Confession of the offence before the Iudge vpon the prisoners arraignement, may be in two sorts.
Confession of the offence must be free and without menace.
3 He that doth confesse his offence before the Iudge, doth become an Approuer.
4 Confession of the offence before the Coroner, whereupon abiuration doth ensue.

Approuer. *Fol.* 178.

1 Who is an Approuer.
An Approuer shall be banished.
2 Of what offences approuement may be.
3 Approuement in an Indictment, and not in an Appeal.
4 Before whom one may approue.
5 How an Approuer shall vse himselfe.
No approuing after pleading.
An Approuer must tell trueth.
6 An Approuers Oath.
7 An Approuers wages.
8 An Approuer set at libertie.
An Approuers appeal must be certain.
9 Proces against the appellees after the approuement.
10 Pleas for the appellee against the approuer.
An Approuer attainted or conuict of Felonie.
11 An appellee cannot appeal others.
12 An Approuer not in prison for felonie, or at libertie.
13 The appellee an honest and credible man.
14 Generall pleas in barre of the appeal.
15 Where the king may pursue an Appeal begun.
16 The appellants release to the appellee.
17 An Approuer confesseth his Appeale to be false.
18 An Appeale abating before declaration.
A felon taken with the manoure.
19 No arraignment at the kings sute vpon a false declaration.
Where, if not an appeal, yet an indictment may be at the kings sute.
20 The plaintife in the appeal excommunicat or outlawed.
21 An approuer pardoned, the appellee shall be discharged.

22 Vanquishing of one of the Approuers.

23 Examining of an offendor condemned.

Sanctuarie and Abiuration. *Fol.* 181.

1 What Sanctuarie is.
2 What Abiuration is.
3 All Sanctuaries be extinguished.
Abiuration by the common Law.
Abiuration to a place within the Realme.
4 No abiuration for Treason.
5 No abiuration for the robberie of a Church.
6 No abiuration for a man attainted.
7 No abiuration for a man before abiured.
8 Where an offendor may be drawn out of the Church by violence.
The offendors confession before the Coroner.
9 Tarrying in a Church aboue the time limitted.
10 The manner of Abiuration.
The oath of Abiuration.
11 The attire of an abiured person.
12 The vsing of persons abiured.
13 The abiuration broken, death ensueth.
A Clarke need not to abiure.
14 Where no Felonie, no abiuration for Felonie.
15 The abiured pleadeth that he is not the same person.
The Kings pardon of abiuration.
16 Abiuration by a Recusant.
17 Abiuration by a Popish Recusant.
18 Abiuration by him that committeth Trespas.

Pleading not guiltie. *Fol.* 185.

1 The plea of not guiltie the most common for a prisoner.
One may plead not guiltie after other pleas.
2 Where, vpon the plea of not guiltie counsell shall be allowed, and where not.

Triall by Battaile. *Fol.* 186.

1 Triall of not guily by Battaile, or by the Countrey.
2 The forme of triall by Battaile.
3 The reason why the defendant in an appeale may be tried by battaile.
4 Counterpleas to the Battaile.
5 Taken with the manoure.
6 Breaking of prison.
7 Lets of triall by battaile on the plaintifes part.
8 Priuiledges of the appellants person.
The King.
A Citizen of London.
9 No wager of battaile in an appeal of Rape.
10 One fighting with seuerall men.
11 An Appeal by an approuer.
12 The appellee wageth battaile, and then becommeth blind.

Triall

Triall by Peeres. *Fol.* 194.

1 The triall of the plea of not guiltie by Peeres.
2 The forme of arraignement and triall of a Peere of this Realme.
3 By whom Peeres appealed ſhal be tried.
By whom Ladies ſhall be tried.
4 The triall of Biſhops.
Arraignment & Triall in parliament.
5 Trial of treaſon cõmitted in Irelãd.
6 Triall of miſpriſion of Treaſon.
The number of Peeres at the triall.
7 Triall of Peeres by Peeres in al caſes of treaſon and felonie.

Triall by the Countrey. *Fol.* 190.

1 Triall of the plea of not guiltie by the countrey.
2 Triall by the Countrie of forraine pleas.
A man ſtricken vpon the Sea, dieth vpon the land.
3 The Proceſſe againſt the Iurie.
The Proceſſe in an Appeale, and not in an Indictment.
4 Where a *Niſi prius* is grantable in an appeale.
5 Remanding of priſoners out of the Kings Bench into the Countrey.
6 Triall of Felonies committed by Engliſhmen in Scotland.
7 The profecutors and witneſſes bound to giue euidence.
8 The acceſſarie tried, though the principall be not.
9 Euery Iuror muſt haue fiue pounds of freehold.
10 The offendor ſhal forfeit no lãds.
11 A like Act made in Scotland.
12 Scottiſhmen repairing into England to giue euidence, ſhall be free from arreſting.
13 The offence ſhall be laied where it is done.
14 He that is once tried, ſhall not be eſſoones called into queſtion.
15 None ſhalbe ſent out of England to receiue his triall.
16 The Iurors ſhall allow of, or reiect the witneſſes.

Challenge. *Fol.* 192.

1 Where the priſoner is allowed to challenge peremptorily.
Seuerance in challenges.
2 Which be challenges vpon cauſe, for that he was an Indictor.
3 Challenge for want of *Medietatem linguæ.*
4 Challenge for want of ſufficient freehold.
Challenge for the King.
6 A man outlawed of Felonie ſhall haue his challenge.
7 A Iuror challenged, for that hee is an Alien, a Villaine, or Outlaw.

Euidence. *Fol.* 195.

1 Some bound to giue Euidence againſt an offendor let to baile.
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6 Euidence or accusors in hie treason.
7 Euidence against abettors to offences.
8 Euidence on the defendants part in felonie.

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2 Who shall not haue his Clergy by the common Law.
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5 Clergie shall be allowed but once.
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7 Offendors in Treason.
8 Confession of the felonie.
9 Clergie taken away by Statute.
A Cutpurse.
10 Forging of Writings.
11 A committer of Buggerie.
12 Counterfeiting to be Egiptians.
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15 Taking a woman against her wil.
16 Practising of Coniuration or Witchcraft.
17 Stabbing, or thrusting to death.
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21 Wandering Souldiers and Mariners.
22 Taking away any person in Cumberland.
23 Committing of murder, poyson, burglarie.
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25 Stealing of goods in one County, and carrying them into another.
26 Robbing of houses, booths, tents.
27 Robbing of a house in the day.
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29 A Lord of the parliament shall haue the benefite of his Clergie.
30 The Indictment must be according to the Statute.
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31 When Clergie shalbe demãded.
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32 Denying to be a Clerke, & yet is.
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33 Who shall allow of Clergie.
34 A felon readeth vnder the Gallowes.
35 To what vse the Ordinarie is imployed.
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36 What is reading as a Clerke.
37 The Ordinaries attendance requisite.
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38 A Priest shall haue no fetters.
39 Bigamus shall haue his Clergie.
40 Another time conuict.
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41 Certificat into the kings Bench of Outlawries, Attainders, & Conuictions.
42 A Clarke deliuered to the Ordinarie.
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1 The Kings oath at his Coronation touching pardons.
2 None but the King can pardon felonies.
3 In what caſes the King may grant pardon.
4 *Non obſtante* in a pardon.
The Suggeſtion ſhall be compriſed in the pardon.
5 The offences ſhall be ſpecified in the pardon.
6 Suit for an approuers pardon.
7 Pardon of the Felonie, but not of the attainder.
8 Pardon of the attainder, but not of the felonie.
9 A ioynt pardon to two or three.
10 A graunt to be quit of eſcapes of felonie.
11 A general pardon by Parliamẽt.
12 The Kings pardon muſt be ſhewed vnder Seale.
A Writ of the allowance of the kings pardon.
13 Hee that hath a pardon ſhall find ſureties of his good abearing.
14 The good behauiour broken after pardon.
15 A Charter of pardon muſt agree with the indictment.
16 The pardon and allowance entred vpon the appeale.
17 The kings pardon no plea in appeale.
18 Vpon a pardon a *Scire facias* awarded againſt an appellant.
19 Nonſute doth not aide an appellee that is outlawed.
20 The Kings Protection.
21 Pardon of a felonie before it be committed.

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1 Standing mute, whereupon *paine fort & dure* doth enſue.
2 Felons refuſing lawfull triall.
3 Pennance onely vpon an Indictment.
4 Pennance for Pyracie.
5 No pennance for high treaſon.
6 No pennance for a man before attainted.
7 Standing mute after confeſſion.
8 Inquiry of him that ſtãdeth mute.
9 The iudgement in pennance.

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1 Iudgement where the priſoner is acquited.
2 The iudgement of a man attainted of high Treaſon.
3 The iudgement of a woman attainted of Treaſon.
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5 The iudgement of a woman attainted of felonie.
6 The iudgement in miſpriſion of Treaſon.
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9 Iudgement in felonie by Iuſtices of *Niſi prius*.
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10 Iudgement by new Iuſtices.
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1 A felon ſhal forfeit lands & goods.
2 Forfeiture of goods.
Flying for the felonie.
3 The acceſſarie fled for the felonie.
4 Forfeiture for petite Larcenie.
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6 Forfeiture vpon the exigent awarded.
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9 Forfeiture of a Clarke conuict.
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12 A felon attainted at the ſuit of one, where moe were to ſue.
13 Forfeiture of other mens goods, and his owne.
14 The Forfeiture where a woman killeth her husband.
15 An executor ſhall not forfeit his Teſtators goods.
16 The forfeiture of goodes holden ioyntly.
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22 The owner ſeiſeth his goods waiued
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33 The yeare, day, & waſt of lands, of what Title ſhall he forfeit.
34 No yeare, day, and waſt of lands holden by ioynt purchaſe.
35 Whether any Forfeiture ſhall be made by Tenant in taile.
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36 Forfeiture of tenant in auncient demeſne.
37 The yeare, day, and waſt forfeited without attainder.
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40 The yere, day, & waſt not grantable from the Crowne.
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42 From what time the Forfeiture of

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of lands ſhall haue relation.

43 From what time the forfeiture of goods ſhall haue relation.

44 Who ſhall ſeiſe and keep Felons goods, and when.

45 The goods of an offendor ſhall not be ſeiſed vntill he be attainted.

46 Who ſhall haue the cuſtodie of felons goods.

47 To whom the forfeiture of lands of a perſon attainted of high Treaſon ſhall accrue.

48 Who ſhall haue the forfeiture in petite Treaſon and Felonie.

49 The Lords remedie for lands eſcheated vnto him.

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52 The forme of a Writ of Eſcheat.

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6 Where the defendant is ſaid to acquit himſelfe in due manner, and where not.

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8 What Iuſtices may inflict the penaltie vpon the Appellant.

9 The dammages for ſeuerall perſons aſſeſſed ſeuerally.

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12 What pleas the Abettors may pleade.

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2 Conſpiracie maintenable vpon an acquitall in an indictment or appeale.

3 The indictment muſt bee falſe which giueth the Writ of Conſpiracie.

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7 What things Coroners ſhall inquire of.

8 A Coroner ſhall execute his Office in his owne perſon.

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10 A Coroner ſhall onely enquire of the death of a man.

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14 Stopping vp of a place of daunger by the Coroners commandement.
15 Where the preſence of all the Coroners is requiſite, and where but ſome one of them.
16 The Coroner muſt record the Euidence, and binde the partie to giue it.
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FINIS.